

Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114672132>

CA20N
XC12
-578

STANDING COMMITTEE ON SOCIAL DEVELOPMENT
MCMICHAEL CANADIAN COLLECTION AMENDMENT ACT
TUESDAY, FEBRUARY 2, 1982
Morning sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Shymko, Y. R. (High Park-Swansea PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Conway, S. G. (Renfrew North L)
Dean, G. H. (Wentworth PC)
Edighoffer, H. A. (Perth L)
Fish, S. A. (St. George PC)
Jones, T. (Mississauga North PC)
Kennedy, R. D. (Mississauga South PC)
Kolyn, A. (Lakeshore PC)
Laughren, F. (Nickel Belt NDP)
Renwick, J. A. (Riverdale NDP)
Roy, A. J. (Ottawa East L)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Dean
Lane, J. G. (Algoma-Manitoulin PC) for Mr. Jones
Pollock, J. (Hastings-Peterborough PC) for Mr. Gillies

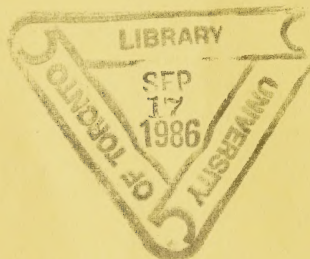
Clerk: Arnott, D.

From the Ministry of Culture and Recreation:

Baetz, Hon. R. C., Minister
Cornell, W., Deputy Minister

Witnesses:

Robinette, J. J., Barrister with McCarthy and McCarthy; Counsel
for Mr. McMichael
Taylor, J. A., Chairman of the Board, McMichael Canadian Collection



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, February 2, 1982

The committee met at 10:05 a.m. in committee room No. 228.

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

Consideration of Bill 175, An Act to amend the McMichael Canadian Collection Act.

Mr. Chairman: I see a quorum. I call the committee to order. We are meeting today to consider Bill 175, an Act to amend the McMichael Canadian Collection, which received first reading on November 26 and was referred to the standing committee, I believe, on December 18, 1981.

I would like to ask the minister to make his opening statement.

Hon. Mr. Baetz: Thank you very much, Mr. Chairman, members of the committee and ladies and gentlemen.

I welcome this opportunity to consider Bill 175 with you. I believe that if we are to have a clear understanding of Bill 175 and the amendments that I will be introducing at the appropriate time, it might be helpful to members to recall some of the circumstances that led to its introduction.

The story of Bill 175 really begins in 1953 when Robert and Signe McMichael acquired their first Tom Thomson sketch. The McMichaels had a particular interest in the Group of Seven. Over the next decade, they collected some 200 paintings and sketches. By the early 1960s, they had decided they wanted to develop and exhibit the collection full-time.

Enterprising though they were, they knew they could not do it alone. They, therefore, sought a partnership with the people of Ontario through the government of Ontario. They wanted the collection "preserved, maintained and developed for the public benefit." The crown represented the public benefit and had the resources to do the job.

So, in 1965, the crown accepted the McMichaels' remarkable gift of their home, land and 179 works from their art collection. Along with the gift, the crown accepted, first, an obligation to sustain and enhance the collection; second, complete responsibility for the collection; and, third, important obligations to the McMichaels themselves. The gift agreement provided that the crown's agent in managing and controlling the collection would be a five-member advisory committee. The committee would be composed of the McMichaels, two others, and a chairman to be appointed by the four.

Between 1965 and 1972 the collection more than doubled in size to about 360 works of art. Many of these works were donated by Canadians who were anxious to join the McMichaels in the effort to build a uniquely Canadian collection in a uniquely Canadian setting. By 1972 it had become clear that the collection was quickly growing into a major public institution that required the creation of a crown corporation for its management in the public interest.

Consequently, in late 1972 the Legislative Assembly passed An Act to establish the McMichael Canadian Collection. The act prescribed that the original McMichael building and land be preserved as a permanent site for a public gallery. It also directed that the art acquisitions would be consistent with the collection's general character.

In recognition of the collection's existence as a public institution and its development through public support, the act stipulated that the board of trustees would be appointed by the Lieutenant Governor-in-Council. The board would consist of between five and nine members. It would be the responsible and accountable authority for the affairs of the collection. The act also embraced the commitments to the McMichaels that were set out in the 1965 agreement. In fact, it formally enhanced them.

In any event, the arrangements set out in the 1972 act were appropriate to the needs of a growing collection, one that would continue to grow through the mid-1970s. Later in the 1970s, however, fire safety questions and concerns about such conservation factors as light levels and temperature and humidity fluctuations started to arise.

In 1978 the Bernard Leech report indicated that the conservation of the collection needed urgent professional attention. At the same time, differences between Mr. McMichael and other members of the board concerning the day-to-day administration of the collection started to surface. On March 30, 1978, the chairman, Mr. Taylor, wrote the minister of that day suggesting that a reorganization of the gallery's day-to-day administration seemed to be needed.

Three months later the board commissioned the Woods Gordon management consulting firm to study the management and administration of the collection. Woods Gordon reported on November 9, 1978. They found a number of things requiring attention and recommended a series of actions.

During 1979 the conservation and fire safety concerns lingered. The ministry urged the collection to address these issues as quickly as possible. On May 4 the deputy fire chief for the town of Vaughan said a series of fire safety measures would have to be undertaken within 60 days. The Ontario fire marshal then drew these matters to the ministry's attention. On July 5 Mr. McMichael proposed directly to my ministry an 18,000 square foot expansion of the gallery. This capital proposal did not address the unresolved fire safety and conservation issues.

When the full board learned of Mr. McMichael's expansion proposal, it concluded that the proposal was not acceptable. The board insisted that the conservation and fire safety issues be dealt with immediately. On August 24 the provincial fire marshal's office informed the ministry that the collection was not responding appropriately to the fire safety concerns and that the town of Vaughan would have to institute proceedings to close the gallery. Some urgent remedial fire safety measures were taken. The town of Vaughan said these measures would be acceptable only in the short term. In the longer term the collection would have to undertake substantial structural measures.

In November, following from the Woods Gordon recommendations and Mr. McMichael's personal nomination, Mr. John Court, a member of the ministry's staff at the time, was appointed administrative director of the collection.

In January 1980 terms of reference were developed for a feasibility study of the gallery's renovation requirements. The board decided that the study should also review the gallery's objectives, operations and administration as a basis for assessing the appropriateness of any further expansion.

In February 1980 the architectural and planning firm of Klein and Sears, working with museum consultant David B. Scott, was appointed to conduct the feasibility study. Klein and Sears reported on May 2. They identified the conservation and fire safety matters that had to be addressed. They also recommended a management reorganization for the collection. They concluded that the appointment of an administrative director had been a helpful interim measure. Nevertheless, the gallery, in their view, required a director and chief executive officer who would bring to the top job a broad range of museum and curatorial skills.

The observations of the various consulting studies prompted Mr. McMichael to start thinking seriously about whether he wanted relief from what had been the significant burdens of the day-to-day management. Throughout the summer of 1980 he had discussions with Mr. Taylor, his fellow trustees and, ultimately, my deputy of that day, Dr. Douglas Wright, and with me.

During these discussions the idea, as recommended by Klein and Sears, of a founder director-emeritus who would be devoted to providing advice and counsel to the board on a wide range of matters began to crystalize. Mr. McMichael seemed genuinely enthusiastic about it and, as you can see from the job description, with good reason. The decision clearly provides great scope for making highly significant and creative contributions to the collection.

On August 19 Mr. McMichael wrote Mr. Taylor a letter indicating his clear intention to resign as director. The McMichaels and the board gave the matter a great deal of further careful thought over the next two months. During this period the board established a task force to implement the urgent fire safety and other structural requirements recommended by Klein and Sears and the fire safety authorities. Each task force consisted of the

chairman and the vice-chairman of the board, Mr. McMichael, other trustees, representatives of the collection's staff and two advisers from my ministry.

Mr. McMichael resigned formally on October 2, 1980. Five days later he approved his new role of founder director-emeritus in writing. Only then did the board set up a search committee to find a replacement as director and appoint the Woods Gordon consulting firm to help with that search. On November 4 the McMichaels were honoured guests in the Speaker's gallery, as many of you will recall, on the occasion of a retirement tribute to them. On January 20, 1981, they were this government's guests of honour at a testimonial dinner and the recipients of warm tributes from many people, including the Premier.

The transition proceeded smoothly through early 1981. On April 7, 1981, Michael Bell, a highly respected gallery professional, who had been acting director of the National Gallery of Canada, was appointed director and chief executive officer of the McMichael Canadian Collection, effective July 1.

On June 8, 1981, eight months after Mr. McMichael had resigned as director and approved his new responsibilities as founder director-emeritus, and two months after negotiating salary and compensation arrangements for his new role, Mr. McMichael and his lawyer of that day, Mr. Wolfe Goodman, came to visit me at my office and presented a list of what they called "basic requirements."

Frankly, Mr. Chairman, the list shocked me because it represented nothing less than a 180-degree turn from the direction in which we had all been going. Mr. McMichael at that time listed nine requirements. Among them were the right to approve in advance any gifts or purchases of art negotiated by the new director and chief executive officer; the authority to concur in the general concept of any exhibition of outside works that the new director might arrange for the gallery; and the right to approve of all structural alterations and changes to buildings and removal of trees.

10:20 a.m

These proposals were, of course, completely incompatible with the founder director-emeritus role and its job description. More compellingly, if accepted, they would not only override the authority of the director and the board, but would give Mr. McMichael powers much greater than those granted to him in the 1965 agreement. The board, too, was completely frustrated by Mr. McMichael's list of basic requirements. It represented in a sense the final straw in a relationship with Robert McMichael that had become increasingly strained over the years.

On June 19 Mr. Taylor met with the Premier and me. He reported that the board had tried to work with Mr. McMichael in every possible way but had now come to the end of its tether. If it was going to fulfil its public trust, it required a clear legislative statement of its ultimate authority over the management and control of the collection.

Mr. Taylor said he and his fellow trustees did not believe they could discharge their responsibilities properly without such a statement. So convinced were they of this, they would have to resign if they were not to be supported by the appropriate statutory authority.

Mr. Taylor also expressed the conviction that Mr. Bell would not take up his appointment and that the way would be clear for Mr. Bell to start breach-of-contract proceedings. Mr. Taylor feared that chaotic conditions would endanger the future of the collection and that the gallery would be closed down for an indefinite period.

Mr. Chairman, we came out of that meeting with the Premier convinced that legislation was required to clarify a number of issues and better reflect the current status of the collection. We had to develop new legislation that would set out the unchallenged authority of the board, that would establish Mr. McMichael's new position in law, and would address some of the concerns that had prompted Mr. McMichael to ask for special powers.

As you know from your examination of the bill that I introduced last November 26, section 1 of the bill deals with the permissible content of the collection. It is designed to ensure that in the long term the character of the collection will be consistent with Mr. McMichael's original concept. Section 2 also deals with the continuing character of the collection by tightening the conditions under which art works from it may be disposed of.

Sections 4 and 5 provide for a salary for the position of the founder director-emeritus and install Mr. McMichael in that position. A section designed to remove any conceivable question of the board's ultimate authority to manage and control the affairs of the collection was written into earlier drafts of the bill.

Ultimately, however, I had it removed because the board's authority, as set out in section 4(1) of the 1972 act, is clearly comprehensive and supreme. Section 4(1) states: "The affairs of the corporation shall be under the management and control of the board, and the board has all the powers necessary or convenient to perform its duties or to achieve the objects of the corporation."

Mr. Chairman, at this point, I would like to tell the committee that there have been discussions between the board and the McMichaels during these last few days. These discussions have produced mutual understanding on several issues. Part of that understanding involves a joint recommendation to me that I move two amendments to Bill 175. I am quite prepared to do that.

The balance of their understanding involves agreements that, while not involving legislative action, are nevertheless closely related to what we are trying to achieve. They could go a long way toward enhancing the collection in the future and fostering greater harmony between Mr. McMichael and the balance of the board. I will speak to them in a few moments.

As I said, the board and the McMichaels together, and I stress that, have asked me to accept two amendments to Bill 175. First, they have recommended that section 1 of Bill 175 be amended.

Section 1 deals with section 7 of the 1972 act. The recommendation is that section 7 should conclude with the words "...and whose art works and objects will not be inconsistent with the general character of the collection."

This wording is taken from the current section 7 of the 1972 act. It is entirely compatible with what we have been saying and with what we have been trying to achieve. While I believe that section 1 of Bill 175, as it now stands, would ensure that the character of the collection would continue to be consistent with the McMichaels' original concept, I am perfectly prepared to accept this additional wording and remove the amendment at the appropriate time.

Second, the board and the McMichaels together have recommended one amendment to section 5 of Bill 175. Section 5 of this bill, as you know, would amend section 18 of the 1972 act, which deals with various entitlements for the McMichaels. The board and the McMichaels have suggested that the new subsection 18(c) of the 1972 act should conclude with the words, "...provided that the duties of the founder director-emeritus will be as set out in the agreement, dated October 7, 1980, between the chairman of the corporation and Robert McMichael." In my view, the agreement has been a binding contract ever since it was signed 16 months ago. I am, of course, prepared to accept the recommendation before me and propose the necessary amendments.

Finally, I would like to comment very briefly on the four areas of agreement between the board and the McMichaels that involve no legislative action. First, they agree that the board of trustees is solely, fully and completely responsible for the management and control of the corporation. My comment here would be that, as I suggested earlier, this reality is inscribed in the law as it now stands. Second, the board and the McMichaels agree that they are bound by the terms of the October 7, 1980, agreement between Mr. Taylor, acting as board chairman, and Mr. McMichael. My comment here would simply be that the board signed that agreement and has considered itself to be bound by it ever since.

Third, the McMichaels and the board agree that the McMichaels are entitled for life to access to the galleries and library of the collection when the galleries are open to the public. My comment here is simply that all members of society, including the McMichaels, clearly have the basic right to enter the gallery during public hours. Of course, we have no problem whatsoever in supporting that proposal. Fourth, they agree, and I quote, "that the collection now known as the McMichael Canadian Collection shall continue to be known forever by that name." This is consistent with the historic thinking of the government and the Legislative Assembly.

I have noted the spirit of accommodation that is implicit in the understanding between the board and the McMichaels, and I sincerely hope that this spirit and, above all, Bill 175 that is before us for consideration, will mark a new beginning, a time from which the McMichael Canadian Collection will go forward to greater strength and success.

Mr. Chairman, I have been advised that Mr. Robinette, who has been serving as counsel for Mr. McMichael, is present and would very much like to make a statement at this time. I would support that proposal. I do hope you will consider that and also consider having that statement by Mr. Robinette, if you concur in that suggestion, being followed by a statement from Mr. Allyn Taylor, chairman of the board.

Mr. Chairman: Thank you, Mr. Minister. I will have to seek consent of the committee to your requests. In the light of both the spirit of accommodation and the new developments, namely, two amendments to the bill based on the recent mutual and acceptable working relationship between the board of trustees and the founder director-emeritus, is it the wish of the committee that we hear Mr. Taylor and Mr. Robinette, Mr. McMichael's counsel, before we question the minister?

That is agreed. Thank you very much. I would imagine we will begin with Mr. Robinette. I would like to point out that Mr. Robinette is not acting as a witness but simply making a statement on behalf of Mr. McMichael, who intended originally to appear.

10:30 a.m.

Mr. Robinette: That is correct. Mr. Chairman. I am pleased to be able to be here to speak on behalf of the McMichaels whom I have been advising in this matter for several months. I say I am pleased because I appreciate on their behalf the very generous words the minister used to describe the tremendous contribution they have made to the cultural life of this province, which I am sure everyone recognizes.

We had approached a possible settlement of this matter, on my side with Mr. McMichael and on Mr. Taylor's side and Mr. Solway's side, to do what was best for the long-term position of the collection. Mr. and Mrs. McMichael were concerned that the distinctive character of the collection might be changed, so we took some care to reword the section of the bill that deals with the type of art that shall be in the collection. As a result, we have named the Group of Seven and, in addition to that, Tom Thomson, Emily Carr and David Milne, who are not members of the Group of Seven but of the same period. We were concerned that including other artists who made contributions to the development of Canadian art made it too broad, so we agreed it should be restricted so that any art work or object purchased or acquired by the trustees will not be inconsistent with the general character of the collection.

Having said that, I also wish to pay tribute to Mr. Taylor because, in our discussions of the last few weeks, he has been co-operative and helpful and, as I have said before, we all set out with the common object of trying to achieve a result that would be in the best interests of the collection. It is for that reason that I, on the McMichaels' behalf, support the minister.

Mr. Chairman: Thank you, Mr. Robinette. I would like to inform the committee that Mr. McMichael, therefore, will not be appearing as a witness following this statement and has informed

me, as chairman, and the clerk of that decision. Mr. Taylor, the chairman of the board, is here. I would like to ask Mr. Taylor to appear before the committee and make his statement.

Mr. Taylor: Mr. Chairman, Mr. Minister and members of the standing committee, speaking for myself and for the six other men and women who act in a voluntary capacity as trustees of the McMichael Canadian Collection, we are in accord with the amendments that have just been proposed by the minister, which reflect the agreement that has been reached within recent days through Mr. Robinette with Mr. and Mrs. McMichael.

Under those arrangements, I think two things are of particular significance. The first is that if the bill is amended and becomes legislation, we will revert to the agreement of October 1980 that defined the role of Mr. McMichael as founder director-emeritus and, of equal importance, again under that arrangement--the arrangement of recent days--Mr. and Mrs. McMichael have acknowledged that the board of trustees, as created under the act of 1972, has responsibility and authority for the management and control of all aspects of the collection. This, to the seven independent members of the board of trustees, has been the core of the issue from the beginning.

If the bill, as amended, is passed, then it will be my very sincere endeavour to urge that the nine trustees--the seven of whom I have spoken plus Mr. and Mrs. McMichael--will close ranks, because there is a very serious breach at the present time. You can understand that the events of the last seven months have created just that kind of an atmosphere, and this must be corrected.

We must commit ourselves individually to open-minded, open-handed standards of conduct in our approach to the affairs of the collection, so as to, on the one hand, preserve the unique atmosphere and the unique character the McMichaels have created, something that has become a source of pride to all of us who live in Ontario, indeed to all of us who are Canadians, but at the same time we will commit ourselves to provide the professional management that a major institution of this size and scope must have.

I would say I am completely optimistic that this can come about. I am particularly optimistic because, reiterating something the minister has said, we have been very fortunate in having acquired the services of Mr. Michael Bell as director and chief executive officer. Mr. Bell is generally acknowledged, among people who are in a position to speak in the world of art, as one of the two or three finest gallery directors in Canada.

Mr. Chairman: Thank you, Mr. Taylor. Before we continue in terms of questions by committee members addressed to the minister, I would like to ask for the committee's advice. In processing this short bill before committee, we followed the normal procedures of advertising and asking people to submit briefs and to indicate whether they would like to make written or oral presentations before the committee. As a result of this, a number of people have indicated they would like to appear as witnesses.

I would like to ask the committee if, in the light of these new developments, perhaps we should inform the witnesses of these developments. Some may, as a result, decline or see no reason to appear before the committee. Others may still want to come before this committee and express some further recommendations or concerns.

I just wondered if there could be a motion providing me with some guidelines regarding witnesses--and you have received a list and they have been advised as to the time and date they should appear--whether such information should be communicated to them; or you may want to move that we do not call witnesses but simply proceed to clause-by-clause discussion of the bill. I seek your advice as to how to proceed because these people have been informed, as I mentioned earlier, and perhaps are not aware of these developments.

Mr. Edighoffer: Mr. Chairman, if I might say a word to your comments and your suggestions, I understand you have made two suggestions following the advertisements that have been placed in the public news media. Personally, and I suppose I should discuss this with my colleagues, I feel very strongly that this is the place where the people have been invited to come to present their views. Because of the extreme interest by the general public, I would personally feel very strongly that people should be allowed to present their views on this particular subject.

Ms. Fish: Mr. Chairman, I would share that view and suggest that your first thought, about at least advising those who have indicated their wish to appear of the minister's statement today, so that they can at least be aware of that, would be a minimum courtesy.

10:40 a.m.

As you indicated, it would then be up to those witnesses to determine for themselves if they wish to speak before the committee, or if, in speaking, they wish to redirect some of their remarks. I would certainly suggest that we do let people know and proceed with the hearings so long as those who are on that list indicate their desire to be witnesses and continue to wish to appear before this committee.

Mr. Hennessy: Mr. Chairman, I think it is only fair that the people who have come here hoping to make a presentation be allowed that opportunity. If they wish to make it, that is their privilege. That is what this committee was struck for, to hear the viewpoint of the general public, their likes and their dislikes in regard to this arrangement. I would have no objection whatsoever. We welcome the people making representation.

Mr. Chairman: Judging from the comments, I have a feeling that, first, all those who had been informed or who have indicated their desire to appear before the committee are to be informed of the changes and are to be allowed to appear before this committee. We will continue to proceed normally with this bill.

If there is no objection to informing the witnesses, I will ask the clerk of our committee to inform all of them of the changes and to ask them whether they are still interested in appearing--in other words, a form of confirmation.

Mr. Kennedy: Mr. Chairman, could they be informed of the proposed amendments so that they would know what these amendments are, even though they have not as yet been tabled and formally moved and seconded?

Mr. Chairman: Yes. I should have mentioned this. The new developments mean both the agreement and the two proposed amendments indicated in the minister's comments and remarks at the beginning of our session today. If there is agreement, I will ask the clerk to proceed.

Any questions to the minister?

Mr. Edighoffer: I might say a word or two. I will try not to be too lengthy. It is the duty of the opposition critic to thank the ministry for preparing such detailed information for us prior to the discussion of this bill in committee. It is certainly much more extensive information than we received prior to second reading. It was interesting to listen to the minister and again hear the rerun of some of his second reading comments.

I am also interested and somewhat surprised at the proposed amendments announced by the minister in his opening statement. However, I must say I am very pleased because, as I recall the last three months as critic of this particular ministry, and being very much involved and interested in culture and the arts, I felt there surely must be some way that the minister and the board and the McMichaels could get together and resolve this problem that had been created. I am still not sure exactly how it had been created.

I am pleased with the process that has taken place because many people in the province have shown their tremendous interest in the gallery which was initiated by the McMichaels, and I am pleased with this process, particularly here in the committee work, to continue our responsibility as legislators to make certain that the public interest is well served.

I certainly look forward to the opportunity to discuss these further amendments that have been proposed and, hopefully, have the opportunity to question the chairman of the board or members of the board or any other interested citizens who are available. I think this process must continue in this committee because, from the manner in which this legislation has come before the Legislature and this committee, really nothing has taken place legislatively since 1972. This is the first opportunity to discuss this matter which, in turn, I believe, relates really to general government policy on culture and the arts. I feel very strongly this will be a most purposeful consideration.

As I said earlier, I am certainly happy that the McMichaels and the board and the minister have been able to come to some agreement. The feasibility study from May 1980 said, "And yet this can not be too strongly stressed. This move to the adoption of museum standards of professional excellence in all areas of its activities must be accompanied at the McMichael Canadian Collection by a preservation of all the unique qualities which make the institution so distinctive and popular." So I look forward to continuing this discussion in this committee.

Mr. Chairman: Thank you, Mr. Edighoffer. Mr. Laughren, I believe you would like to make some comments.

Mr. Laughren: Briefly, Mr. Chairman, it would be nice if there was an amicable end to this whole affair. I think that is still going to be difficult when we still have legal representatives talking to legal representatives. It indicates that there is some distance to go yet, but that is the intent on both sides and, hopefully, that will occur. As a member of this committee, I suspect I share the feelings of some of the other committee members that there has been a lot of fast foot-work going on around us as we sit here about to contemplate or debate the bill.

That is one of the reasons I feel that the witnesses should still be invited after they have been made aware of the agreement and the proposed amendments by the minister because I hope that some of those witnesses will have a message to the government and to the members of this committee on the role or atmosphere that should exist in the arts between government and other cultural institutions, crown corporations and individuals in the province of Ontario, and there must be a renewal of confidence between the two. For those reasons, I support my colleagues who feel that the witnesses should be encouraged to appear before the committee.

Mr. Chairman: Thank you Mr. Laughren. Any further comments or questions to the minister?

Mr. Conway: I would just like to say, Mr. Chairman, like my colleague from Perth, I am pleased to note that in the minister's statement this morning and in the presentation of the learned counsel acting on behalf of the McMichaels and the representation made by the chairman of the board of the McMichael Canadian Collection we seem to have an undertaking, an understanding, which resolves some of the rather significant difficulties which were publicly reported, and some more interesting ways perhaps, fairly widely privately mooted over these past number of months.

One is moved to think that the minister's statement this morning endeavours to convert this legislative committee room into a Tapawingo of sorts, a house of joy. I certainly applaud that reasonable people have come to an apparently reasonable settlement of some very, very difficult divisive policy and personal matters.

10:50 a.m.

Like my colleague, the member for Perth (Mr. Edighoffer), I am conscious of the fact that, among other things, Bill 175 is an opportunity for this Legislature to look at the relationship between this province, as represented by the government and the Legislative Assembly, and the arts community. I note that from time to time the latter is wont to complaint publicly that too infrequently do the political powers, the legislators, investigate and acquaint themselves with the matters of public policy that relate to the arts community.

I am excited not only by the agreement this morning, which of course I will want to look at much more closely than I have had the opportunity to do in these brief moments, but by the prospect of discussing with you, Mr. Minister, with the chairman of the board and with others just what we have going out there in Kleinburg and why it is so successful. Quite frankly, like most members here, I have visited that gallery on a number of occasions and find it a truly remarkable story about which I think all Ontarians must be justifiably proud.

When one thinks of the difficult time we have with other galleries in attracting audiences, that one seems to have achieved a rate of success of which most other galleries in the country would be very envious. I want to say that I look forward to the representations that have been called for and that have been indicated by the clerk's office. I see it as a positive opportunity to look at the relationship between this Legislature and the arts, the galleries in particular.

I just want to say, Mr. Minister, that while today might not be a useful time for me to engage in a questioning of you in so far as your very interesting statement this morning is concerned, I must tell you when one reads the statement, when one listens to the inflection and the tone, one has a sense of how Paul must have felt on that lonely road to Damascus because there really is a remarkably new orientation to all of this. As I say, quiet country boy that I am, I was distressed to have heard what the private grapevine around this place and around this province was coughing up with respect to this particular debate. I won't trouble you now with the people's radio network 32-minute broadcast yesterday morning on this subject, but really 24 hours seems to have put a much happier face on this issue.

Let me just say to you, Mr. Minister, to the chairman of the board and to others, that I look forward to carefully analysing what you have presented us with here this morning. I thank you for coming through with it. I think this committee has a lot of very positive work to do. With the help of the chair and our witnesses, we will get on with expedition and great success I am sure.

Mr. Chairman: Thank you, Mr. Conway. I have always admired the colour with which you express some of your observations. I would like to ask the committee members, if there are no further questions or comments addressed to the minister--

Mr. Roy: Mr. Chairman, I think it would be, I would not say improper, but certainly I would feel somewhat guilty after having followed this issue as long as I have, not to make some comment on the development this morning and, hopefully, on the prospects for the review and the study of certain issues that have been suggested by my colleagues who have spoken before me.

As I have stated, I have followed this issue and I must say that I have been deeply saddened by the very unfortunate dispute, if I may put it that way, that has gone on now for these many months. I could not quite understand why in a collection in a gallery which had such reputation, not only in this community, but right across Canada, the main players within that process should be

so involved and so at loggerheads with the original donors, Mr. McMichael and his wife, who appeared at various times and about whom we heard innuendoes being spread, not only through the caucuses of the various parties here but through certain brown envelopes that floated around. We read certain articles in the Globe and Mail and other places. I recall our colleague, who is no longer with us, Hugh Winsor, writing a column one day about what had been going on.

I have no evidence there was a deliberate leak on the part of the ministry to put a different flavour on the individuals involved in that, but the whole process was not one that was becoming, I felt, to the enhancement of such a great and beautiful collection in such a popular gallery. Having met the players, at least having met the McMichaels and knowing who were involved, I always felt an agreement was possible.

This morning I am not surprised by the fact that there is an agreement because, frankly, as a politician I felt this situation was intolerable for all those involved. If we were going to get involved here in this committee for these number of weeks in a certain acrimony with witnesses coming forward-- and, of course, being as objective as we always are, we have to get involved in the process--it may have caused more friction and who knows what the results or conclusion may have been from such a dispute.

I felt that, for all those involved, an agreement was something we could certainly expect and I am pleased to see there is an agreement. I agree with the members of the committee that those witnesses who said they wanted to speak should be given an opportunity. Having expressed the willingness to come forward, I think we should hear them. As my colleagues have said before, it will be an opportunity for us to review possibly not only the policy of the ministry and those involved with the collection and with this gallery, but the general policy of the government. We do not intend to take an undue amount of time, but I think, as my colleagues have said and the critic has said, this will be a good opportunity for us to review what has taken place.

As my colleague Mr. Conway said, I have listened to the minister's statement this morning and I see a certain flavour put on that particular statement. I know everybody is being extremely cautious. The claws are drawn in. I have much more limited experience than some of the players here, including the respected counsel who were involved in the process, but it reminds me of so many court actions where the knives are drawn and we are ready to do battle. Then, at some point, an agreement is arrived at and everybody has nice things to say about everybody else and life goes on. There is some of this flavour here this morning. I just sense some of that. There is certainly some restraint; everybody is being very mellow, very gracious and all of that. I say that more on the part of the other players involved than the ministry because I thought the ministry's statement put a particular flavour on it. It may be justified; I don't know.

We would like to look at some of this to see what has gone on, the prior agreement and the 1980 agreement. We hope this whole experience will have been an opportunity for us, as members of the

Legislature, who are very much interested in the arts and certainly in the Group of Seven and some of the native artists and so on, to participate in one of the most generous gifts and one of the most popular collections and galleries in Ontario. I hope we will not see a repetition of what unfortunately took place in this situation.

I have read some of the briefs that have been submitted. Certainly some of the concerns people would have in Ontario are that what has taken place here is not a great incentive for other people who may have some ideas about making gifts to the province, to the Crown, if down the line they can expect the type of dispute and friction which took place here. Hopefully, this will not be repeated. I hope this will have been a learning experience for all those involved and certainly for the members of the committee.

11 a.m.

Mr. Chairman: Thank you, Monsieur Roy. Are there any further questions or comments by members of the committee to be addressed to the minister? I would like to indicate that of all the witnesses, we certainly have one present who is aware of the changes. We have had an indication from at least one committee member, Mr. Edighoffer, who would like to question that particular witness later on.

I am referring to Mr. Allyn Taylor, the chairman of the board. He has made a statement. He was scheduled to appear tomorrow, Wednesday. It is just after 11 o'clock. Some committee members have indicated that they would like to have more time to study the two recommendations and perhaps look at the implications of this. You may wish to adjourn now and perhaps indicate to me which witness we should ask to appear at 2 o'clock this afternoon.

As I said, Mr. Taylor is here and the committee certainly has the right to indicate its wishes if it considers that a certain witness should be before the committee.

Mr. Edighoffer: This is the first opportunity I have had to see the exact amendments. If Mr. Taylor is busy tomorrow, the committee has been called for this afternoon, and I am quite sure we would be most happy to question him this afternoon, if that would be agreeable with the committee.

Mr. Chairman: We can request that of Mr. Taylor. It is up to him to decide whether or not he wants to. I do not think there is any need to order someone to appear, but I am sure that Mr. Taylor probably would have no reservations in appearing before the committee. Can I ask you in point-blank fashion, Mr. Taylor, whether you would be available this afternoon?

Mr. Taylor: I have no reservations, Mr. Chairman. I will be happy to appear this afternoon or tomorrow at your pleasure. Unfortunately, as I indicated some time ago, I have a long-standing commitment on Thursday that would make it very inconvenient for me to be here. I did not think I would be asked to witness, but certainly I will be happy to be here this afternoon or tomorrow if you wish.

Mr. Chairman: Thank you, Mr. Taylor. I would like to remind you that the clerk is calling all the witnesses that have indicated their desire to appear before the committee. I think he should be given some time to contact all of them and indicate to us who will be appearing so that we can readjust the schedule--the time and the day--for these witnesses.

Mr. Conway: I would personally be very pleased if we could convene this afternoon to discuss with Mr. Taylor any issues that members might have pertaining to the matter before us. I wonder, as well, is there a problem with the minister's timetable. Is it likely that we might be able to call upon him at another point a little later in these proceedings?

At the conclusion of hearing witnesses when we will go into clause by clause, I would think, given my past experience here, there may be situations and matters that arise during the course of that testimony that we might like to discuss with the minister--at a point after the witnesses have concluded.

Hon. Mr. Baetz: Your time is my time.

Mr. Chairman: We will adjourn until two o'clock and begin with Mr. Taylor.

The committee recessed at 11:05 a.m.

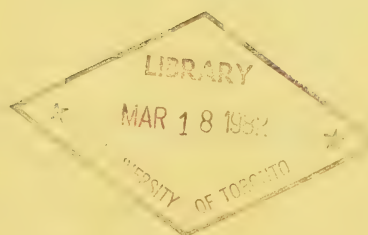
EA20N
XC 12
S 78

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

TUESDAY, FEBRUARY 2, 1982

Afternoon sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Shymko, Y. R. (High Park-Swansea PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Conway, S. G. (Renfrew North L)

Dean, G. H. (Wentworth PC)

Edighoffer, H. A. (Perth L)

Fish, S. A. (St. George PC)

Jones, T. (Mississauga North PC)

Kennedy, R. D. (Mississauga South PC)

Kolyn, A. (Lakeshore PC)

Laughren, F. (Nickel Belt NDP)

Renwick, J. A. (Riverdale NDP)

Roy, A. J. (Ottawa East L)

Substitutions:

Hennessy, M. (Fort William PC) for Mr. Dean

Lane, J. G. (Algoma-Manitoulin PC) for Mr. Jones

Pollock, J. (Hastings-Peterborough PC) for Mr. Gillies

Clerk: Arnott, D.

From the Ministry of Culture and Recreation:

Baetz, Hon. R. C., Minister

Noon, M., Director, Grants Administration Branch

Saxe, D., Director, Legal Services Branch

From the Ministry of the Attorney General:

Williams, F. N., Legislative Counsel

Witnesses:

Bell, M., Executive Director, McMichael Canadian Collection

Solway, H. H., Barrister with Goodman and Goodman; Counsel for Mr.

Taylor

Taylor, J. A., Chairman of the Board, McMichael Canadian Collection

LEGISLATURE OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, February 2, 1982

The committee resumed at 2:12 p.m. in room No. 228.

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

Resuming consideration of Bill 175, An Act to amend the McMichael Canadian Collection Act.

Mr. Chairman: I see a quorum and I call the committee to order. Welcome, Mr. Renwick.

We are resuming our deliberations on Bill 175. The witness this afternoon will be Mr. Allyn Taylor, the chairman of the board of the McMichael Canadian Collection. In addition to the documentation members have received from the clerk, I have asked the clerk to distribute exhibits 24 and 25 to be added to the list of documents that you have.

I would like to ask Mr. Taylor to join us in the witness seat. If there is any member of the board who would like to join you, he is most welcome to assist you, Mr. Taylor, if you so desire.

Mr. Taylor: Mr. Chairman, I'd be afraid to suggest it. I have to live with them later.

Mr. Chairman: All right. It is your decision, but I just felt that in case you wanted to there would be no problem.

Mr. Taylor: May I reserve that?

Mr. Chairman: Certainly. Please sit down, Mr. Taylor. I will open a list of speakers, those who want to address you. We'll start with Mr. Edighoffer.

Mr. Edighoffer: Thank you, Mr. Chairman. I appreciate Mr. Taylor making himself available for the committee, and particularly this afternoon.

How long have you been chairman of the board, Mr. Taylor?

Mr. Taylor: It feels like 1,000 years; it is actually nine years, sir. I became chairman in April 1973 and assumed office at the time of the first meeting of the board.

Mr. Edighoffer: Since the legislation of 1973?

Mr. Taylor: Well, the legislation was 1972, but the board became operative on April 1, 1973.

Mr. Edighoffer: Has there been quite a change in the membership of the board? If such a change takes place, what qualifications do you look for in people to act on the board?

Mr. Taylor: In answer to the first part of the question, there are three of us who are original trustees, Mr. Larrett-Smith from Peterborough, Mr. Jack Wildridge from Toronto and myself. As for the other four trustees, apart from Mr. and Mrs. McMichael, who are, as you know, appointed for life, those positions have revolved. That is the answer, I think, to the first part of the question.

In answer to the second part of the question, sir, I think really this is something for the minister and the appropriate officials in government to decide upon. I haven't involved myself to any degree at all in the appointments to the board. I think we've been very fortunate in the appointments to the board. Having said that, on a couple of occasions appointments were made without my knowledge, and even though I felt that they were very good appointments, I did say that I felt that courtesy dictated that the chairman of the board, who serves in a voluntary capacity, should have been consulted. But that didn't cast any reflection on the appointments that were made. I think we have been very fortunate in every respect in the people who have served on the board during my term of office, and that's not a pleasantry.

Mr. Edighoffer: So, basically, you're saying that it has been the government's or the minister's responsibility to decide what persons should act as members of that board.

Mr. Taylor: Yes.

Mr. Edighoffer: It is completely up to them. Therefore, you feel that since 1973 the minister and the government have been responsible for those appointments.

Mr. Taylor: Yes, I do, and I think that is as it should be too.

Mr. Edighoffer: What is a typical board agenda? I mean, how often do you meet?

Mr. Taylor: We started our meetings on a bimonthly basis, and we have held pretty well throughout the piece to that schedule of meetings, although there have been meetings in between on occasion when there was specific reason for it, so the meetings have been held six times a year.

The agenda for the meetings has covered basic items: the reading of the minutes and the discussion of the minutes of previous meetings; it has concluded with a report from the director; and in between it has had such items as acquisitions and deacquisitions, approval by the board of acquisitions and deacquisitions made within the parameters that have been laid down by the board and exercised by the director or by the valuation committee, as the case may be, and then, I suppose, a broad number of questions not of a recurring nature that have been required to be addressed at the time of the meeting or in the interval between meetings.

Mr. Chairman: If I can interrupt for a minute, I have difficulty associating the relevance of the numbers of meetings and when the board meets with particular sections of the bill, so I want to remind members to think of the relevance of questions and comments and so on as they relate to the bill.

Mr. Edighoffer: I appreciate your views, Mr. Chairman. You are always very free in presenting your views, and as chairman you certainly have the right to try to bring the members to order. However, it seems to me that the minister in his opening statement made many comments about the board and how it led up to this legislation. What I am trying to find out is really how the board assisted in bringing this legislation or making recommendations to the minister. I certainly feel that it is in order. I know it is up to you as chairman to rule me out of order if I--

Mr. Chairman: I haven't ruled you out of order. I want to remind the members that we should keep this in mind.

Mr. Roy: Mr. Chairman, I have a lot of respect for you, but I hope your intervention is not an indication of your attempt to curtail our knowledge of what goes on in the board because these are all matters that this legislation pertains to. I think it is important. If you don't feel it is, I want to know what the board is all about, who is on it, how often they meet, what their responsibilities are. I think these are all very relevant, with respect, Mr. Chairman.

Mr. Chairman: No, there is no intention on my part to prevent the members of the committee from obtaining any information with regard to the operation of the board. I simply am bound by the orders of committee procedure to try to make sure that the discussion and deliberations are related in some fashion to the present bill under discussion, which is a procedure that has normally and traditionally been followed in committee deliberations in the past.

Mr. Roy: You have seen our largess in respect to the minister's statement. None of us made any objection to that, and I certainly think my friend the critic's questions are relevant to the whole process here. I just wanted to make that comment because I really don't think that anything he has said so far is irrelevant to what we are doing here.

2:20 p.m.

Mr. Chairman: Proceed, Mr. Edighoffer.

Mr. Edighoffer: I'm sorry for the interruption, Mr. Taylor. Are your meetings open to the public? Are the minutes of your meetings available, say, to members of this committee?

Mr. Taylor: The meetings have not been open to the public, sir, and I'm afraid I can't answer the question as to whether the minutes are open to the members of this committee. The minutes are not open to the public.

If I may, I should complete the answer I was giving you on agendas and say that at each meeting we deal with budgets, with the relationship of actual receipts and disbursements to the budget for the year, with receipts in the gallery shop and with attendance and with a number of relevant financial figures. That is basic in the agenda of every meeting.

Mr. Edighoffer: I hope you don't mind. You said you couldn't answer that last question as to whether the minutes are available to this committee. I wondered if you would mind if I just ask the minister whether they would be available to this committee.

Hon. Mr. Baetz: No, I would have to take that under advisement. I am not prepared to promise that the minutes of the board are open to this committee. They are the minutes of the board; they are not the minutes of the ministry.

Mr. Edighoffer: I will take that as a no unless you wish to consider it further.

Hon. Mr. Baetz: As I say, I would be prepared to take it under advisement, but I certainly can't make any promises here. As I say, the minutes of the board are the property of the board, and I don't think it would be up to me to promise to share them with other groups.

Mr. Conway: If I could then, just as a supplementary, I would ask the chairman of the board, since it's clear from the minister that he would view those as your property, and since you're the chairman of the board and there are minutes that have been kept, presumably from the inception of the board, can you undertake to give a personal indication as to whether or not--I gather from your first answer that you weren't sure if it was within the ambit of your authority to release those minutes even if it were your wish. Now the minister seems to have thrown the ball back to you and said: "Well, presumably they're your minutes. If you want to release them you can." How do you feel about that prospect?

Mr. Taylor: No. I would think they are private minutes as far as the proceedings of the board are concerned, available to the ministry. Then what the ministry chooses to do with them--and I hope I'm not begging the question; I'm not intending to--I would think is at the pleasure of the ministry.

Mr. Conway: But you can appreciate how this is developing into a bit of a dance of the dialectic here. The minister says they are your minutes. You say that they are your minutes; you would be prepared to release them if the minister allowed them. I'm sort of confused as to--

Mr. Taylor: I would release them to the ministry. They are available to the ministry at any time upon request. Then what the ministry may do with them by way of distribution is entirely in the discretion of the ministry. This is my opinion.

Mr. Conway: It is not your predilection to release them to the public at large, let's say to this committee.

Mr. Taylor: No, sir. I do not believe they should be released to the public at large.

Mr. Roy: You have expressed that view to the minister that you do not feel they should be released or be made public at any time?

Mr. Taylor: Well, sir, I am not sure whether I have expressed it to the minister, but I will do it now.

Mr. Roy: Does that save you, Reuben?

Interjection.

Mr. Edighoffer: Mr. Taylor, the reason I asked that question--

Hon. Mr. Baetz: The McMichael gallery is by no means the only gallery or museum in the world that--I don't want to use the word secretive--is rather concerned about open meetings or about the minutes being widely disseminated, and a lot of it has to do with the donations of art works and so forth and its evaluations and so on. The McMichael gallery is not at all alone in following this practice; there are many other outstanding galleries and museums that follow a similar practice.

Mr. Taylor: The minutes are obviously scrutinized by the Provincial Auditor as, of course, they should be. Perhaps I should add that.

Mr. Edighoffer: The reason I asked that question is that I thought it might just save a little time and probably an explanation by you, sir. According to the minister's statement this morning on page 12--it's a very brief part and I will read it--"On June 19 Mr. Taylor met with the Premier and me. He reported that the board had tried to work with Mr. McMichael in every possible way but that it had now come to the end of its tether. If it was going to fulfil its public trust, it required a clear legislative statement of its ultimate authority over the management and control of the collection. Mr. Taylor said he and his fellow trustees did not believe they could discharge their responsibilities properly without such a statement. So convinced were they of this, they would have to resign if they were not to be supported by the appropriate statutory authority."

I thought probably if we could get a copy of the minute, there would be something in there that would show what the board had agreed on as appropriate statutory authority, but it seems we can't get a copy of that. I wonder if you could explain to the committee what was meant by this.

Mr. Taylor: Sir, I think the events from October 1980 to June 1982 provide an explanation. On October 2, 1980, Mr. McMichael formally submitted his resignation, subject to the appointment of a successor. At that time, he came to London for a discussion with me and signed the resignation that day. At that same time, he wanted to approve the letter setting up the terms of reference of the founder director-emeritus and I dissuaded him from doing it. I

said, "This is too important from your standpoint, Bob, and I want to be sure and I want you to be sure this is what you want to do." That was on a Thursday, and there was a board meeting the following Tuesday in Kleinburg. I said, "I would like you to take this letter back with you and think about it in the interval."

On the following Tuesday I spent a couple of hours with him in the morning before the board meeting, as was my custom, and at that time he signed the letter which set out clearly, as I say, the terms of reference of his new position. Then a search committee was appointed, and I think this was covered in Mr. Baetz' material this morning. A search committee was appointed, and in April Mr. Bell had accepted the position and was confirmed as director, effective July 1, 1981. That was a unanimous appointment, in the sense that both Mr. and Mrs. McMichael were present and voted in favour of the appointment of Mr. Bell and the terms of reference relating to his appointment.

On June 16 at a board meeting I was astonished and other trustees were astonished to have Mr. McMichael appear with his then counsel, Mr. Wolfe Goodman, QC, and submit a list of basic demands for his involvement in the operation of the collection. He had presented these to Mr. Baetz three or four days before, unbeknown to me. I had not been given the courtesy of an indication that this was being done by him. I learned of it from the ministry the day of the meeting.

Those demands were completely at variance with the terms of reference of the founder director-emeritus that he had approved of in October of the previous year. They were completely at variance with the role of the new director we had hired and whose hiring he had approved. I shouldn't say "hiring"; I should say "engaged." I apologize, Mr. Bell. So I felt there was no alternative but to ask the Premier, through the minister, for clarification as to the role of the board under the 1972 act. I went to the Premier and spoke of my own convictions on this score and said I believed I was speaking for the other six trustees. I don't know whether that's an answer to your question or not. I hope I haven't spoken at too great length in giving it to you.

Mr. Edighoffer: I understand from your reply that really you asked for statutory authority to have Mr. McMichael named founder director-emeritus.

Mr. Taylor: No, sir, I don't think I did. I think what I asked the Premier and the minister for was clarification or confirmation, and I presumed it had to be done by legislation, to establish the fact, once and for all, that the board of trustees as appointed under the 1972 act had the responsibility and the authority for the management and control of the collection. I said at that time that I did not presume to say what legislation was required; this was for the government to decide. I simply wanted, and I knew I spoke for my fellow trustees, confirmation of the authority we had always thought we had from the first meeting in 1973.

2:30 p.m.

Mr. Edighoffer: I understand the ministry had been working on legislation for quite some time. Was there a recommendation from you as the chairman and members of the board, particularly in reference to a previous proposal which states: "Effective April 2, 1973, the agreement entered into on November 18, 1965, between Her Majesty the Queen in right of Ontario and Robert McMichael and Signe McMichael with respect to the McMichael conservation area and the McMichael conservation collection of art is void and has no effect"?

Did your board request such a proposal?

Mr. Taylor: No, sir. As I say, the board requested whatever legislation in the opinion of the government was appropriate to confirm our position. The government did show us a draft of a bill which contained such a provision. To us it was completely sensible, and I must say we were speaking without political knowledge at the time. We were speaking simply from a common-sense standpoint to us and from the knowledge of our experience of the previous years.

There had to be something to clarify the fact that we were managing and controlling a corporation, but I have taken the stand from the beginning, and I think the minister will bear this out, that it was not for me or for any member of my board to initiate suggestions as to what the legislation should be, but rather to look to the government to proceed as they might see fit in that regard.

Mr. Edighoffer: That answers that question very well. As you know, this committee operates in a manner whereby we can ask questions of different people before the committee. Once we go into the committee stage, it is very difficult to go back and get information from these people who are willing to bring forth their knowledge. I hope it's all right, Mr. Chairman.

The statement this morning said there was an agreement made between the board and the McMichaels, and the minister listed four areas. What I can't understand is what type of agreement would make it legal, I guess, or make certain that it maintains the name, McMichael Canadian Collection, forever just by agreement between the board and the McMichaels.

Mr. Taylor: May I be excused if I ask my counsel questions?

Mr. Edighoffer: Certainly.

Mr. Taylor: May I answer this, Mr. Solway?

Mr. Solway: I think you are asking a legal question of Mr. Taylor, Mr. Chairman.

Mr. Chairman: First, as a matter of procedure I would like to have the consent of the committee to allow the counsel to the chairman of the board to join him in providing him with any advice. That is the procedure that normally is followed, so if you seek that advice, I would like to ask members of the committee, "Would you have any objection?"

Agreed to.

Mr. Edighoffer: We are always agreeable.

Mr. Solway: My name is Solway, Mr. Chairman. My advice to my client on that score would be that the enforceability of that type of a covenant is a legal question which my client may be able to answer, but if he does, he is practising law without a licence.

Mr. Renwick: He is protected here.

Mr. Solway: Yes, he is protected here.

Mr. Chairman: I don't know whether that satisfies your original request for information, Mr. Edighoffer, but that is the advice that counsel has given.

Mr. Solway: As I understand the question, it is whether or not that agreement is enforceable.

Mr. Chairman: First, as a matter of order and procedure, the counsel can counsel the witness but should not be addressing the committee in this case.

Mr. Taylor: Then might I ask you to repeat the question, sir?

Mr. Edighoffer: I am just wondering how an agreement between the board and the McMichaels can remain in effect forever. Why isn't it entrenched in legislation? Why isn't it added as an amendment to the legislation?

Mr. Solway: May I answer that question because--

Mr. Chairman: Once again, I am in a bind with procedure as to the role of a counsel as an adviser to a witness and that of a counsel becoming a witness. I am bound by past precedents that the counsel can advise privately the witness, but should not be addressing the committee.

Hon. Mr. Baetz: Mr. Chairman, if I might, to get you out of the procedural dilemma you find yourself in, I think it is appropriate if I call on the ministry's legal counsel who would have some comments to make on this very question: Should an agreement like this be enshrined in legislation or should it be contained in this kind of agreement, and why was the legal opinion that it should be in the agreement rather than in the legislation?

Mr. Chairman: I would ask the ministry counsel to join us and to provide any information we may be seeking at this time.

Ms. Saxe: The gist of the answer is very simple. It is not possible to pass a statute that says anything will last forever. It is not a binding statute. The statute that stands right now, the present McMichael Canadian Collection Act, states that the name of the corporation is the McMichael Canadian Collection. That is as permanent as you can get since you cannot bind future parliaments. Adding the word "forever" in the bill, even if legislative counsel would allow it, which I don't believe, would be totally meaningless because you cannot do such a thing in a bill.

What we have is that the government of Ontario, through the Legislature, which is the supreme voice in the province, now states that its name is the McMichael Canadian Collection and it cannot be changed except by the Legislature. There is no way of stopping the Legislature from changing it. What the board and Mr. McMichael have agreed is that, as far as they are concerned, the name will always stay the same, but they cannot, by contract, stop the Legislature from doing anything it pleases any time in the future, and neither can we.

Mr. Edighoffer: It sounds like the 1965 agreement.

Mr. Roy: I think my colleague was involved, and he may correct me if I am wrong, but part of the ministry's statement this morning said that the minister was going to propose a couple of amendments to that legislation. Then he went on to say that there were other matters that had been agreed upon. I do not have the page in front of me. Maybe my colleague can help me. What page?

Mr. Edighoffer: Page 18.

Mr. Roy: There were a number of other matters, four areas. "First, they agree that the board of trustees is solely, fully and completely responsible for the management and control of the corporation." Okay, the legislation does that.

Ms. Saxe: Again, it is a matter of the two of them agreeing--

Mr. Conway: There is also the comment on page 15, quoting from the minister's statement: "A section designed to remove any conceivable question of the board's ultimate authority to manage and control the affairs of the collection was written into early drafts. Ultimately, however, I"--that is, the minister--"had it removed because the board's authority, as set out in section 4(1) of the 1972 act, was clearly comprehensive and supreme."

Ms. Saxe: We have here a couple of things. First of all, there is the question of the name. It is a part of the agreement between the McMichaels and the board that the two parties agree between themselves that the name will never be changed. But, as I've said already, no agreement they make can stop the Legislature in future years from changing the name. There is nothing this Legislature can do to stop future legislatures from changing the name. The only thing we can do is what we have already done, which is have the statute say what the name is, which it does.

Mr. Conway: My point is this : In response to Mr. Taylor's very direct concern that the board had reached a point in 1981 where it simply felt it had to have a clarification of its legislative mandate, it went to the minister with that request. We have now the minister's statement. I am coming back to your comment, Mr. Taylor, how it seemed to be at variance with what the minister said this morning. Mr. Taylor, you said you went because you needed a clarification of your legislative mandate to control the affairs of the collection.

The minister says, "A section designed to remove any conceivable question of the board's ultimate authority to manage and control the affairs of the collection was written into early drafts." That was removed because, according to the minister's statement, "on reflection it was set out comprehensively and very clearly in the 1972 legislation."

2:40 p.m.

What is confusing me here is that seemed to be the matter of most serious and immediate concern to you and the board in the late stages of 1979, 1980 and 1981. That was the main thrust of your presentation to the minister. Yet now the minister is saying, "Well, really, we ought not to have been too worried about it because upon looking at"--I was just looking at that section of the 1972 act, and I must say I am not, like my friend the member for Ottawa East (Mr. Roy), a member of any bar, of a legal kind at any rate, and the impression I would get is that it is quite clear to me and it seems to have been quite clear to the minister. What I do not understand is where the confusion was.

Mr. Taylor: The confusion arose from the fact that Mr. McMichael was increasingly alluding to the fact that under the 1965 agreement he had powers that went quite beyond what the board and he had agreed to under the founder director-emeritus letter of October 1980. Our stance was that we were going to have to get clarification of this. Mr. McMichael, with increasing frequency, was alluding to the fact that, "I have powers under the 1965 agreement."

The seven independent members of the board, if I may refer to them that way, including myself, have felt from the beginning--or I would not have accepted the appointment initially, and I am sure this applies to the others--that it was the 1972 statute that was the governing act. Indeed, it was the only act because the other was an agreement. Simply because we were moving into more and more open water with a new director coming aboard, with some very difficult renovations required to buildings that had been shown to lack in security measures, we just felt we could not continue without clarification of it.

Mr. Conway: All right. My question, as a result of that, has to be to the minister. Given the fact that your ministry had an ongoing relationship with this board, what sort of legal advice did you have, that they did not have, that allowed you to pen this statement, which seems to have very clearly concluded that the board was wrong in assuming that they did not have, on that key area, the clarification which they wanted? Correct me if I am wrong, but on page 15 of your statement this morning, it seems very clear that you have concluded that while the board may have had some worries, legally they had had that mandate as of the 1972 act, specifically section 4(1).

Hon. Mr. Baetz: What happened was that there was a good deal of legal opinion expressed, but there were different legal views being expressed. One said it is very clear; it is in the act and there it is. Another suggested that perhaps it is not all that clear. The view that prevailed from the legal experts of the day was that the act spells it out very clearly, and that is that.

Beyond that, there were several other very strong and related reasons that we felt, along with the board, that we had to introduce legislation. One related to Mr. McMichael's concern about the long-term nature, or special characteristic, of the collection.

Mr. Conway: I appreciate that but I want to tie up that one loose end. Help me here because I am having a little bit of a problem. These fine outstanding civic people on this board, doing a very important job with a very famous Canadian gallery, come to you in 1980-81 saying, "Listen, we need clarification on our key point of concern, and that is our legislative mandate for the operations, the management and control of that collection. You, on behalf of the government, have got to help us. Give us that clarification or we just have no reason to stay on and we will threaten to resign." Indeed, you do respond to the bill, but you do not legislate on their key point of concern.

I am totally confused about your concern and this bill, because you do not in this bill legislate on the key point of the board's concern. You say in your statement of this morning that was clearly set out in 1972 legislation. Again, I am not a lawyer, but on the face of it, that is confusing.

Hon. Mr. Baetz: As I said, there were different views among the lawyers. As I noted here on page 15 of my statement this morning, and I quote it again, "A section designed to remove any conceivable question of the board's ultimate authority to manage and control the affairs of the collection was written into early drafts." There were some legal advisers who were saying maybe it is not clear. There were others who said: "It is clear. It is redundant. Why put it in?"

I said in the statement, "Ultimately, however, I had it removed because the board's authority," according to legal advice, "as set out section 4(1) of the 1972 act, was clearly comprehensive and supreme." That is the best legal advice I got, so we concluded, why put it in the act because it is, in a sense, redundant.

Along with that, there were a number of other very key points that really made it quite necessary for us to introduce this legislation. Of course, one was to establish the office, or at least name Mr. McMichael to the founder director-emeritus position and to provide a salary for him.

Mr. Conway: All right. Mr. Taylor, let me ask you, just to conclude my point here, did you ever plug in on behalf of the board with the legal advice that convinced the minister of the crown, to whom you report and under whom you operate, that in fact your worries were really not well founded in law?

Mr. Taylor: When you say plug in, the matter was not discussed by any counsel acting for the collection. That was done intentionally because I took the stand from the beginning that it was up to the government to give us what confirmation they felt we needed. As long as we got confirmation from them as to our role, so that we could put an end to the misunderstanding that was growing between Mr. McMichael and Mrs. McMichael on the one hand and the seven trustees on the other, if we got that confirmation from the government, and let them decide the manner in which to give it to us, then that was sufficient for us.

Mr. Conway: But you can see the difficulty a person on the sideline might have looking at this, because in the final analysis it seems to have been the case that you and the board were prepared, as a matter of conscience, to resign over an authority that you wanted, but that in the final analysis you apparently had for nine years.

Mr. Taylor: On the question as to whether we had it or not, we had assumed from the beginning that we had it, but Mr. McMichael with increasing frequency, as I say, was questioning whether or not we did have it. I think it was a natural thing for me to say when he did a complete about-turn on June 16, 1981, and when we were in the position that a new director was taking his place two hence weeks. I am sure he would not have accepted the position if Mr. McMichael's contention of his minimum demands had been upheld. Mr. Bell, I am sure, would never have been persuaded to take his role because he would not have been the chief executive officer. I am sorry if I am begging the question.

Mr. Conway: I thank the chairman for his considerable indulgence in allowing my sometimes parenthetical questions.

Mr. Edighoffer: Perhaps once some other members participate--

Mr. Kolyn: Could I ask you how your appointment came about and how you were recommended?

Mr. Taylor: I have seen somewhere in the last two or three weeks in the welter of material that Mr. McMichael had recommended my appointment, and I can honestly say that I had not known that prior to that time. I received a telephone call in March 1973 from the Premier. I have known him, as you know a number of people, and out of the blue he asked me if I would accept the appointment as chairman of the McMichael Canadian Collection. I knew nothing about the collection except that it was a great source of pride for Canadians.

I said, "I really cannot say without giving it some thought." I had just retired as president and chief executive officer of my own company and I had, as a result, a little time that I was able to allocate and I was intrigued with it.

2:50 p.m.

I said I would like to talk to some of my friends in London because I had indicated that I would take on a fund-raising campaign chairmanship for a London art gallery and I did not want any conflict there. I told them if there was any conflict with the London art gallery I could not do it, even though that is down the road. I said, furthermore, I would want to be assured that there was going to be what I guess is termed an outreach program. Coming from London and not feeling that everything begins and stops in Toronto, I like to think that exhibitions from galleries in Toronto do find their way to the hinterland. I said I would have to have assurance that the government would encourage this.

I went back to him within a week or so, after talking to a number of people in London, and he assured me that the government would enthusiastically support any sensible outreach program. So I accepted the appointment. I took office on April 1, 1973. I am sorry if I am speaking--

Mr. Kolyn: No, that is all right. I would like a detailed explanation. Have you yourself, since being appointed chairman, made recommendations for anybody who would be coming on future boards? Have you recommended anybody who is on the present board to the government?

Mr. Taylor: Yes, I think Mr. McMichael and I together recommended that Mr. Reg Dowsett come on. Mr. Dowsett was appointed. I felt he was uniquely suited as a candidate. While I knew him only in a slight business way, he had an impressive track record in that respect. Mr. McMichael was very interested in having him as a trustee because Mr. Dowsett's father had been the first chairman--in 1965 I believe it was. He retired because of ill health in about 1976.

Mr. Kolyn: In other words, any of the present members of the board could give their personal recommendation for new additions?

Mr. Taylor: Yes, and indeed Mr. Baetz encouraged the submission of names. On more than one occasion I talked to Mr. Baetz about that, and we were encouraged to make suggestions. As I said in response to an earlier question, I must be frank. On two occasions I rose on a point of order and said, "I think courtesy dictates that the chairman be spoken to before a brand new name is put into the ring," even though those names, as it turned out, were entirely satisfactory.

Mr. Kolyn: Since 1972 Mr. McMichael has had the prerogative of suggesting names for the future boards?

Mr. Taylor: He has. On two or three occasions I was with him when he called on Mr. Baetz and we were encouraged to make suggestions. I am not familiar with the processes of the selection committee, but as I understand it, names are fed into some government appointment committee--

Interjection.

Mr. Taylor: Mr. Chairman, may I ask Mr. Baetz if I am giving a proper reply to that question?

Mr. Chairman: You would like to address the minister with a question?

Mr. Taylor: I would just like to ask him if he feels that I am giving a factual answer to that question.

Mr. Baetz: Yes, sir.

Mr. Roy: I would just like to follow up on the items raised by my colleague Mr. Edighoffer, which were followed up by Mr. Conway. The item is on page 18. The minister stated "...would not require legislative action." The first one was that the board is solely, fully and completely responsible. Mr. Conway has discussed that with you at some length.

I take it you had gone up to see the government for some clarification, whether it required legislative action or not. You thought that possibly the most effective way of doing it was by way of legislative action. At some time the minister concluded that legislative action was not necessary but the 1972 act was clear. I take it he must have got back to you and said, "Look, the act is clear." You, at some point, accepted that. Am I correct?

Mr. Taylor: I think it is correct in every respect except to say that I accepted it. I really have tried to keep myself removed from the legislation. I have been sitting with more than passing interest to see what legislation eventually developed and the bill as it existed until last Friday gave the board of trustees full power to determine the duties of the founder director-emeritus. That in itself would have gone a long way towards answering the question that I had asked.

Mr. Roy: As Mr. Conway said, your concern and the threat by the board to resign unless it was made very clear what the authority of the board was by way of legislative actions, I take it at some point the minister must have said to you: "That's not necessary. The 1972 act gives you that authority."

Mr. Taylor: I was told that on a number of occasions. I have to be frank and say, because I am not much of a one for passing the buck, I don't want anybody to misunderstand me when I say that in my opinion and I am naïve politically, I admit that, I am perhaps not naïve in other respects but I don't profess to be familiar with political nuances. To me, the correct thing to do, and I still feel it, would have been to declare the agreement of 1965 null and void, simply because I had been told for nine long years that the 1972 act was indeed the authority that applied but inasmuch as Mr. McMichael was constantly referring and with increasing frequency to the fact that really it's the 1965 agreement and he was using this in a number of ways that were becoming increasingly difficult to contend with.

For instance, he was saying that he and Mrs. McMichael alone could decide what trees would be taken down on the property and when initial moves were made to put in some footings at the collection and it was necessary to remove some trees, on more than one occasion Mr. McMichael, without authority, had the work stopped and this becomes expensive. I was simply moved to the point in June when he--

Mr. Roy: You realize, Mr. Taylor, it has been very difficult for the government to give you some assurance that the 1965 agreement was null and void and had been superseded by the 1972 act when, as I recall, the answer of the minister to my colleague Mr. Renwick, back in 1971-1972 when the legislation was passed, was that the 1972 legislation was encompassing and was

keeping the spirit of the 1965 agreement. There would have been a contradiction there politically which--

Mr. Taylor: That's quite true and I think that's the reason that I from the beginning have refused to involve myself in whether the 1965 agreement indeed did have any validity today or whether, as we had always assumed, the 1972 act was the source of our authority.

Mr. Roy: Just to complete what my colleague Mr. Conway suggested to you, you realize that the present Bill 175 does not do what you originally suggested the ministry should do. You understand that you have already got that authority in the 1972 legislation.

Mr. Taylor: I must say, sir, that what we have received in the last 24 hours is of the utmost significance to me. As I said this morning, I think the most significant thing is that Mr. and Mrs. McMichael have now acknowledged in the presence of their counsel the fact that the board of trustees as appointed under the 1972 act does indeed have the full authority to administer and it has the authority for the management and control of the collection.

I think the fact that they signed that document, not with any of us present but in the presence of their own counsel, is of the utmost significance to me and that indeed gives me complete clarification and complete assurance that I can now proceed, if this becomes legislation, towards melding the thinking of the two groups on the board.

Mr. Roy: Please forgive me, Mr. Taylor, if I appear to be somewhat naive--

Mr. Taylor: I am sorry if I am not giving you direct answers--

Mr. Roy: No, no, no. I understand what you are saying but my problem is that we, the opposition, over the last six months have been observing this dispute. We have talked about it in some of our statements here and one of the disputes is some of the things that you have talked about: the board saying it thinks it has authority under the 1972 legislation and Mr. McMichael comes along and says: "No, you can't do that. I have a 1965 agreement that overrides your 1972 legislation." This festers and there is a dispute and so on. It becomes public and there are all sorts of things going on.

3 p.m.

I find it strange that at some point, generally speaking, when there is a dispute of that nature going on, you wouldn't get a legal opinion. Shouldn't you go to a lawyer and just get him to interpret this thing? The act appears very clear in section 4(1). As the minister says, it seems to be about as wide as you can go. If somebody comes along and says, "I have the right to do such and such," and I take the piece of legislation and say: "That is not what the legislation says. It says this," I would have thought that would have cleared up the problem without all this festering, this

in-fighting going on. I just find it strange that, the 1972 legislation being as clear as it is, the dispute as to who has authority should go on so long.

Mr. Taylor: It has not been clear to Mr. McMichael.

Mr. Roy: Yes, but somewhere along the way, accepting what you are saying, was Mr. McMichael ever faced with a legal opinion saying, "Here is what the legislation says and in my opinion it means such and such"?

Mr. Taylor: I wouldn't care to speak on that, because Mr. McMichael has had his own personal counsel on this matter for some year and a half now. I don't think I should speak on that question. I honestly don't know. I do know we have been shown legal opinions from the government to the effect that, indeed, the act of 1972 is the governing act. As far as I am concerned, I have been holding a listening brief waiting to see what will eventually come out of the processes of the Legislature in the way of confirmation. As it stood on Friday, we were going to get something that I must say I thought was emasculated, but at least it was going to establish the fact that the duties of the founder director-emeritus would be established by the board.

Mr. Roy: I understand that. That is part of Bill 175, but I find it strange even that it should be mentioned at page 18 that "First, they agree that the board of trustees is solely, fully and completely responsible for the management and control of the corporation." I thought the act said that and that was not necessary, frankly, as an agreement. But let me proceed--I don't want to belabour that problem.

The second thing that you agree, which doesn't require any legislative action, is that they are bound by the terms of the October 7, 1980, agreement between Mr. Taylor acting as board chairman and Mr. McMichael. Again, why you would need that sort of an agreement outside of legislation when, in fact, it is in legislation? Isn't that one of the amendments you are going to propose?

If I look at page 17, Mr. Minister, the last paragraph says, "The board and the McMichaels have suggested that the new subsection 18(c) of the 1972 act should conclude with the words, '...provided that the duties of the founder director-emeritus will be as set out in the agreement dated the 7th day of October, 1980, between the chairman of the corporation and Robert McMichael'." I am just confused. You seem to be agreeing on something that is already in the legislation or is going to be in the legislation.

Mr. Taylor: May I answer that, Mr. Chairman?

Mr. Chairman: Yes.

Mr. Taylor: I was asked, with Mr. Solway, my counsel, to meet with Mr. Robinette and Mr. McMichael, which we did a week ago. At that time Mr. Robinette indicated to us the four points on which Mr. McMichael would like our acquiescence. After some look at them, we decided there was no reason why we shouldn't agree with any one

of them because they were completely consistent with what we had been doing from the beginning. Mr. McMichael was putting emphasis on the fact that he wanted the agreement of October 7, 1980, to apply. It had never been in our minds that we would sidestep the agreement that was made then, even though he had turned his back on it in June of last year, so I suggested, of course, we would agree to that.

He also wanted the question of access to the gallery during the hours when the gallery is open to the public to be assured. Because I am very anxious that we avoid, as much as we possibly can, misunderstanding down the road, I said, "Yes, we will agree to that provided it is understood that that does not necessarily mean access from their present apartment," because in all probability, as the renovations to the building proceed and as we comply with what the architectural division of the ministry has now assured us is the case, we will be closing off the entrance from the McMichaels' apartment to the collection. I wanted that clearly understood. This was pointed out to Mr. McMichael before he signed this document.

Mr. Roy: If I may interrupt you, Mr. Taylor, I wanted to ask about the third point, the access to the gallery, but if we might just finish on the second point, the question of the October 7, 1980, agreement. That is going to be in the legislation, as I understand it.

Mr. Solway: I wonder if I could assist, Mr. Chairman? It would shorten the matter.

Mr. Roy: Am I reading your statement wrong on page 17?

Mr. Solway: The wording of the actual agreement sets out that the duties will be set out within the legislation. The agreement itself between the parties indicates that each party agrees to be bound by the agreement. They are two somewhat separate matters.

Mr. Conway: But we are right in assuming that the duties as set out in the act will coincide exactly with the duties as described in the October 1980 agreement?

Mr. Solway: They are exactly the same. But it is not a duplication. The act will set out the duties; the agreement just indicates that both parties agree to be bound by the previous agreement.

Mr. Roy: You will agree that it appears to be somewhat emphasizing the obvious if it is already in the--

Mr. Solway: We did it because we were asked by Mr. McMichael to do it.

Mr. Roy: I see. Mr. Taylor, let us get back to the third point. I just want to say to legislative counsel I think it would be difficult to put into legislation the accessibility to Mr. McMichael to view the collection. I understand what you are saying, but I find it very strange that this man--the original man who

started the collection, the thing is named after him and everything else--is given, in an agreement, the same accessibility as the general public. That sounds a bit much.

Mr. Taylor: I am sure that is not what Mr. McMichael had in mind. What Mr. McMichael had in mind was access from his own quarters. I know it does not say that in the agreement because his counsel simply asked for access during the hours when the gallery is open to the public. But as I say, because I want to avoid misunderstanding if I can, Mr. McMichael was informed before he signed that in all probability his access from his apartment would be closed off, because I believe it will be. The ministry said, quite properly, "It would be ludicrous to put that kind of a clause in legislation for the very reason that you give." So it is not going in the act.

Mr. McMichael made the four points. He made the three we have now discussed, including access, and the fourth was that the collection would be known as the McMichael Canadian Collection for all time, to which we were entirely agreeable. Those were the four points that were laid before us. He said, "Mr. McMichael wants these." They were a far cry from what Mr. McMichael wanted in June 1981. None of them presented any problem as far as I was concerned, and I said: "Indeed I will recommend them to my fellow trustees. But there is a quid pro quo as far as I am concerned. I will not recommend anything unless Mr. and Mrs. McMichael will now acknowledge that the responsibility and the authority for the management and control of the collection is in the hands of the board of trustees." That was the quid pro quo and I was entirely responsible for that. This was the content of the agreement that was signed last week.

The four points were presented to us by Mr. McMichael, to all of which I acceded, to all of which my fellow trustees have agreed. I did it on the understanding that Mr. and Mrs. McMichael would--what to me is tantamount to removing any question of doubt about the 1965 agreement, because in the presence of their own counsel they have now committed themselves to the fact that the 1972 agreement is not the governing factor in the collection.

3:10 p.m.

Mr. Roy: I apologize if I sound somewhat na'ive or a bit aggressive but it appears to us that sometimes the fight was over something that was obvious in the legislation and, secondly, in the agreement, as you might say, there is an acknowledgement now by McMichael as to who has control of administration and so on. I thought that would have been clear from the 1972 legislation, and if not then, did he not sign an agreement in 1980 as well?

Mr. Taylor: Yes, but the agreement he signed in 1980, he turned his back on completely in 1981.

Mr. Roy: Maybe I should discuss this with counsel, but the final thing you see is that the collection now known as the McMichael Canadian Collection shall continue to be known forever by that name. I think you said that even though you put that in legislation a different Parliament could come long and change that.

Ms. Saxe: That is right. It is not now proposed to add anything to the legislation as it stands. This is something that Mr. and Mrs. McMichael and the board agreed to between themselves. It is not part of the recommendation to the minister for an amendment.

Mr. Roy: If that is the agreement between the parties, and if all the parties are wholly and enthusiastically in favour of that, could it not be put in some preamble to the legislation, or something? It is better in legislation than it is just having a verbal agreement. Is there anything written about this?

Ms. Saxe: Mr. Roy, I think section 2 of the present act already states the name of the corporation is the McMichael Canadian Collection. There is nothing more that can be done. That is as permanent and as forever as anything in the British and Canadian legal system can be. There is not anything else.

Mr. Roy: I think there are things that are more permanent than just naming it in the act. For instance--I do not want to be ridiculous--had we put it in our Canadian constitution--

Ms. Saxe: Short of the charter going back to England, that is right.

Mr. Roy: --it would be more permanent, right?

Ms. Saxe: The only thing you can do in a statute is make a process for changing things, which is more difficult, but there really was not any obvious process that the board wanted, or that Mr. McMichael wanted, other than having the Legislature have the last say.

Mr. Roy: Would it not be nice, considering that everybody is so agreeable these days--at least this morning--to have sort of a preamble stating that it is the intention of the parties that the collection known as the McMichael collection shall be known as that forever?

Ms. Saxe: It would not have any legal effect at all.

Mr. Roy: Except it would have, certainly, more impact if some further Legislature came along, and some fellow who rushed into the House after we opted to, picked up the bill to see the amendment and said, "You are changing something which a Parliament 75 years down the line had said was going to be for ever." That is more accessible than some agreement which is not even in writing, I understand.

Ms. Saxe: There is a written agreement.

Mr. Chairman: With reference to the agreement, I would like to ask the members of the committee if it is your wish that we obtain a copy of that agreement since you are making reference to it so often, and it is mentioned by the minister?

Mr. Conway: The October 1980 agreement?

Mr. Chairman: No, I am referring to the agreement mentioned on page 18 of the minister's remarks.

Mr. Roy: Is that an agreement dated as of yesterday?

Mr. Chairman: Mr. Taylor, would it be possible to obtain a copy of that agreement for the members of the committee?

Mr. Taylor: Of course it would.

Mr. Chairman: Would you obtain a copy as soon as possible?

Mr. Conway: I just want to check with you, Mr. Chairman, and through you to some of the committee staff. One of the important items in all of this is that October 7, 1980, agreement entered into between Mr. McMichael and the board, concerning his functions and his duties as founder director-emeritus.

Mr. Saxe: That is part of the compendium still.

Mr. Chairman: It is subsection (d) of the compendium of information.

Mr. Conway: My apologies, thank you.

Mr. Roy: If I may ask counsel--or maybe the minister can tell me--is there any objection to having a sort of preamble that I am suggesting? It would indicate that it is the intention of everyone concerned and the crown to see to it that this collection remain forever the McMichael Canadian Collection?

Hon. Mr. Baetz: Certainly as far as the government of today is concerned it would be totally compatible and consistent with our views that this should be the permanent title of the collection. Now having said that, I am guided by what the law writers say, by the legal experts. If they tell me that this somehow or other is ridiculous or is redundant or is out of place or is something that a good government should not co-operate with, then we might do it another way. In principle, I certainly have no objection at all, in one way or another, to making it clear that we think of this in permanent terms.

Mr. Chairman: Once again I am sorry to intervene, but you are amending something that is not in the bill when you are talking about a preamble to it. I would not want this discussion to pursue the question of a preamble to the bill. It is not--

Mr. Roy: I am trying to make the legislation or the agreement better or more effective. My problem is this, Mr. Chairman: There is apparently a February 1982 agreement. This agreement is not referred to in the legislation, Bill 175, at all. Apparently the agreement is binding and so what I am suggesting is that there should be some way, especially when you are talking about something as permanent as forever, which they want, of putting it in.

If they do not want to spell it out in the legislation, and I agree with counsel that it may look foolish in legislation to say

this collection will be known forever as the McMichael Canadian Collection, but in a preamble you can spruce it up, stating the general function of this piece of legislation. That is why I am talking about a preamble and suggesting to the minister that because there is no reference to the 1982 agreement, that we have that, whether it may be Mr. Taylor or anyone to take objection to that.

Hon. Mr. Baetz: Mr. Chairman, as Mr. Roy was making his proposal that we might have some kind of a preamble, I must admit I was sympathetic to the idea, but going back to my earlier observation about what the law writers say, I have just been handed a note that there are no preambles to legislation in Canada. Apparently, this is an American practice.

Mr. Roy: Oh, come on. Did we not have a preamble in the Family Law Reform Act not too long ago?

Mr. Renwick: There was a preamble in the Ontario Human Rights Code just the other day, and in the Labour Relations Act.

Mr. Roy: Mr. Renwick is quite right. I make that suggestion because either there or somewhere in this legislation you make reference to this 1982 agreement.

Mr. Chairman: You may be entertaining a motion eventually, I guess, to amend the bill by introducing an amendment.

Mr. Kennedy: At one point I recall dealing with another piece of legislation--

Mr. Chairman: Is this a supplementary because I have a list of--

Mr. Kennedy: It is a supplementary, Mr. Chairman. I recall dealing with another piece of legislation where a preamble was suggested. We were told there is really no precedent where there is a preamble with pieces of legislation. Maybe the family law is a first, I do not know. It is, in effect, sloppy legislation and just is not done in putting forward bills. To me, the title of this bill could not be more sharp or bring it into focus more vividly. The title says the McMichael Canadian Collection Act. I do not know how we can go beyond that in expressing it any more positively or why we should.

3:20 p.m.

If we can put together anything that can add to that, I am willing to listen, but I recall very clearly from an extensive discussion when it was desired to put forward a preamble in a certain bill known as Bill 19 two or three years ago, and this was the learned opinion from legislative counsel and those who know about such things.

Mr. Chairman: I would like to hear from the legislative counsel who is present here, Mr. Williams, with regard to that particular question of preamble.

Mr. Williams: I am not sure I can answer everybody's questions. I think I can try to clarify a little bit what everybody is saying and summarize what different people are saying. I hope not to attempt to try to sound as if I am taking sides on this, with all respect to Mr. Roy.

There is nothing wrong with having a preamble. It is not generally accepted practice in Ontario, although there are several examples. The Family Law Reform Act is one; the Ontario Human Rights Code is another.

Part of the problem at this stage in the proceedings--referring to Mr. Roy's idea of adding a preamble at this stage of the bill--had the minister put a preamble into the bill and Mr. Roy did not agree with the preamble, I think it would be proper at the committee stage to amend that preamble. But I think precedent would show that it would not be proper at this stage to introduce a preamble in an amending bill when there was nothing to that effect in the bill.

The other suggestion I would make, with all due respect to having a preamble in there, would be to have the preamble say something to the effect that the bill would enshrine the name of the McMichael Canadian Collection for all time. I am just reiterating what counsel has already said: that would not change what is already there. The name of the collection is the McMichael Canadian Collection and any Legislature at any further date could very well change its mind and change the name of that bill or the name of the collection.

Mr. Renwick: The problem is that in the 1972 act it is the corporation that is called the McMichael Canadian Collection and not the collection. That is the strange problem. Most people would think that the McMichael Canadian Collection was a collection of art, but it is not. It is the name of a corporation. In the definition section of the 1972 act, which now happens to be chapter 259 of the Revised Statutes of Ontario, 1980, there is no reference in its definition to the words, "McMichael Canadian."

Let me be very explicit. There is a definition in the 1972 act and in the 1980 revision of the statute which says, "Collection means the artworks and objects vested in the corporation or Her Majesty the Queen in right of Ontario and held by the corporation for exhibition or display." So there is nothing which says that the name of the collection will be the McMichael Canadian Collection. All there is is the name of a corporation, which, in the next section, says, "Corporation means the McMichael Canadian Collection."

I do not see why the point could not be met by the minister, without getting involved in the question of preamble, by defining by way of amendment to the 1972 act precisely what it is intended to mean. If, in that definition, we not only spelled out clearly what it was to mean but we also named it, it at least would be clear, subject to the right of some subsequent Legislature to change the name of it. But at the present moment, that collection has no name as such. The corporation, of which Mr. Taylor is the chairperson, has the name the McMichael Canadian Collection. It is

a matter of substance.

Mr. Kennedy: Are you saying a change to section 1(b) of the 1972 act for further clarification would answer the concern that has been raised?

Mr. Renwick: If I were looking to find out whether or not this collection held by this corporation, of which Mr. Taylor is the chairperson, bore a name, I would look at the definition of "collection." When you look at the definition of "collection" there is no name to the collection. I think it is a very reasonable request, that if in this document which has been agreed in order to make the work of this committee perhaps somewhat lighter but certainly more confusing, says it doesn't need to be in the agreement, I say to the minister that I think it should be in the agreement. It doesn't solve the problem for all time.

Mr. Kennedy: No, it doesn't change anything. This isn't carved in stone. No legislation is.

Mr. Renwick: It's subject to a couple of things. You can change anything, but I won't labour that further point. Perhaps when I have an opportunity I'll ask some questions. I can clarify that.

Mr. Roy: Yes. I think you make an excellent point that an amendment could be made, possibly, in the definition of "collection" to encompass the intention that the collection be called the McMichael Canadian Collection. That's what I was suggesting because, to get back to my point, Mr. Chairman, there's an agreement to call it that forever, and yet there's nothing in the statute that refers to this agreement. Why don't we put in the statute that this collection is the McMichael Canadian Collection? I quite agree it's more effective than doing it in the preamble. I was suggesting a preamble because I couldn't see how you could define it or make a section saying it shall be called that forever.

You see, the point I want to make is simply this: Sure, we're making amendments to legislation, but the fact is that when something gets written in a statute it's much more difficult to change than if it's just in an agreement or just simply referred to as the McMichael Canadian Collection Act. My God, we're passing 200 or 300 pieces of legislation a year here in this Parliament, which change all sorts of things. I just want to establish something more permanent here, and I think Mr. Renwick's suggestion is an excellent one. I would like the minister to consider it.

Hon. Mr. Baetz: I'll do so.

Mr. Chairman: The next speaker is Mr. Laughren, followed by Mr. Conway.

Mr. Laughren: Mr. Taylor, you stated earlier that it had been your wish to have the 1965 agreement declared null and void. Is it your view that the present bill and the agreement will have the same effect as declaring that agreement null and void?

Mr. Taylor: Yes, sir, it does to me. I think that what's

happened in the last 24 or 48 hours is very significant in that respect because for the first time Mr. and Mrs. McMichael have acknowledged that the responsibility for and authority over the collection and the management of it are in the hands of the trustees.

Mr. Laughren: Would the bill itself, without that agreement, have accomplished that as well?

Mr. Taylor: Sir, if I may, I have assiduously avoided getting into the legislation because I just felt that was not for me to do; that was for the government. We're appointed by the government. I simply went to the government and asked for clarification of our authority. I would still not venture an opinion as to what should happen. As far as I'm concerned, Mr. and Mrs. McMichael have now signed an acknowledgement that the board, as appointed under the 1972 act, is indeed the authority in the management and control of the corporation. That's all I need.

I think this, plus the fact that Mr. McMichael has reverted to the 1980 agreement, which he decided to move away from last June, are the most significant things that have happened in a long time, and they give me a feeling of confidence that we can move on now with the collection, bring the board together and do what we're supposed to do.

Mr. Laughren: There's reference in the minister's statement this morning to increasing tensions between the board and the McMichaels during the last few years, and there are a couple of examples there. Was it your view that those tensions arose primarily from the differing interpretations that you and the McMichaels had of the power of the 1965 agreement over the legislation?

Mr. Taylor: I think it arose primarily, sir--and I'd like to say this in such a way that you believe that I mean it. I have great sympathy for Mr. and Mrs. McMichael, and nobody is more conscious than I am or than the other six trustees are of what they have done; and when there has been suggestion, as there has been many times in the last eight months, that the board is oblivious of what the McMichaels have done it has hurt us badly, because it's unfair.

3:30 p.m.

I think the McMichaels had a very hard time adjusting to the role of a board because they are essentially entrepreneurs. They built this themselves. They made their own decisions. To have to submit to the group judgement of a board was a very difficult thing for them. I am keenly aware of that. I think that as the collection grew, and as the need for professional management became increasingly apparent Mr. McMichael, himself, more and more frequently showed awareness of the fact that there had to be a change from a private collection in a private home run for the benefit of the people of Ontario, to professional management of what has become a national institution.

I don't know whether I am answering your question or not. I

think the tensions arose because of the increasing size and complexity of the operation, and then of course, within the last two years, because of, first, the Woods Gordon report, which pointed to the inadequacies of administration, and the Klein and Sears report, not only in its relation to structure but in its relation to the inadequacy of the buildings, all of which have been put in place before the board was appointed.

Mr. Laughren: The minister's statement makes reference to one area which seemed fairly significant. That was the decision of Mr. McMichael to expand that 18,000 square feet to the buildings and how the board did not want to do that, partly because it did not address the problems of fire protection, and so forth, of the existing buildings. I am wondering whether or not most of the problems, as they developed over the years, were a result of those kind of decisions as opposed to a philosophy of running a major Canadian gallery.

Mr. Taylor: The board took a stand in the summer of 1979 when Mr. McMichael first mooted another addition. But before another addition was contemplated we had something to strengthen the administrative process. We had had the Woods Gordon report in November of the year previous, so we simply took the stand that we would not recommend to the ministry any addition of any kind until we had resolved the administrative problem. As a result of that, Mr. Court was brought in as the administrative director in November of 1979.

Mr. Laughren: So now the new director, Mr. Bell, has basically all the powers of decision making that were formerly held by whom, by Mr. McMichael?

Mr. Taylor: By Mr. McMichael.

Mr. Laughren: And he exercised those.

Mr. Taylor: Yes, but there is a basic difference. Mr. Bell came aboard having spent many years in other positions where he understood the importance of accountability to a board. Mr. McMichael, and I say this kindly, found it difficult to understand the significance of accountability to a board because he had been accustomed to doing things himself. He felt, and I am not suggesting he was wrong at all, that everything he did was in the interests of the collection. He had created it; it was indeed his child. But the fact is accountability to a board responsible for a major institution was the other side of the coin. Mr. Michael Bell is well aware of the constraints that lie on him as far as reporting and accountability to a board is concerned.

Mr. Conway: Mr. Taylor, I want to pick up where my colleague from Nickel Belt (Mr. Laughren) left off. I want to try to deal with a number of points, but I will start with what, for me at least, is the most important point.

We have just been handed by the clerk of the committee an agreement signed on the one hand by the McMichaels and on the other by you on behalf of the board. It takes me back to where this all started, which is this agreement, 16 and a half years ago. On a

number of occasions today you have talked about the fact that there was an ongoing difficulty in the administration of your mandate that went back to, "What did this mean?" As you have indicated, Mr. McMichael felt it meant a lot of things in terms of the post-1972 period that you were not either in agreement with or clear on.

I just want to ask a question and I want to start by saying that in that 1965 agreement the centrepiece seems to be that section 7, "An advisory committee of five members is hereby created consisting of Robert and Signe McMichael..." It provided that in the event of the death or incapacity of either McMichael, then the other McMichael may appoint a member in substitution therefor.

It also consisted of "two crown appointees, one of whom shall be a member of the executive committee of the authority"--the authority in this case being the Metropolitan Toronto Conservation Authority--so that the two McMichaels, two crown appointees, one of whom must be from the conservation authority, and "a fifth member appointed by the other four, who shall be chairman." It also provided that in the event of a vacancy on the committee existing for more than 30 days, the crown may appoint..."

Basically that is the adviser of the board, four plus one, two McMichaels, two crown appointees, one mutually agreeable chairman. "The advisory committee shall perform such functions, exercise such powers and be subject to such obligations as pertain to it in this agreement, and shall make recommendations as to the preservation, maintenance and development of the McMichael conservation area and the decision of the majority of members shall continue to be the decision of the committee." It goes on to set out the mandate, but the key executive body in that agreement is that five member board on which the McMichaels have two positions.

Along comes the 1972 agreement and I do not want to and I am not going to cite chapter and verse of the act, but a very important question turns up immediately upon the introduction of that legislation and that is, what does this act mean for the 1965 agreement? My colleague and friend from Riverdale asked on November 23, 1972, of the then Minister of Culture and Recreation--it was not called that--but Mr. Renwick says and I quote on that day, November 23, 1972:

"Mr. Chairman, I am not going to repeat what I said on second reading. I think it is most important and not as a matter of legalities at all, I think it is essential that there be a reference in the bill to the obligation of the foundation to carry out the obligations imposed on the crown by that agreement and that the bill itself contain a schedule as a schedule of the agreement of 1965 establishing the collection, so that the public statutes of Ontario will, for all time, contain the 1965 agreement within the bounds of those statutes."

Mr. McNie, as minister, responds and I quote: "Mr. Chairman, as I said earlier, I am satisfied that the intent of the bill is to accomplish just that."

I was not here then but I must tell you that the 1972 bill alters one of the most significant aspects of that agreement,

namely, the makeup of the advisory or executive committee and it alters it in a very significant way. A board of not less than five and not more than nine.

That, to me, is a very important difference between the 1972 act and the 1965 agreement, but a minister of the crown stands in his place and says, "...I am satisfied that the intent of the bill is to accomplish just that," to incorporate the 1965 agreement. Then, as you indicate over the course of the 1970s, while you and your board had a mandate to administer the 1972 act, there was an ongoing confusion, to say the least, about the connection between those two. It seems to me you cannot blame the McMichaels for taking a minister of the crown at his word when he stood in his place that November day nine years ago and said, "We believe the bill to incorporate the agreement."

Then, of course, we get the discussions in the Legislature this past fall and I am not going to labour the point, but I just want to note a couple of things.

3:40 p.m.

The minister will recall that on Monday, November 16, 1981, he said, and I quote Hon. Mr. Baetz from page 3520 of Hansard, "I would simply like to say at this point, however, that this government certainly has no intent whatever to renege on any agreements made and reached with Robert and Signe McMichael." A little later on the same day, quoting the minister, he said, "In the interim I want to stress, repeat and emphasize that it is not the intention of this government to in any way welsh, or walk out of or renege in any way on any agreements made with the McMichaels."

I would note at that time a draft bill is circulating which has, as one of its provisions, and I simply quote from the draft bill, section 18(a)(1), "Effective April 2, 1973, the agreement entered into on the eighteenth day of November 1965 between Her Majesty the Queen in right of Ontario and Robert McMichael and Signe McMichael with respect to the McMichael conservation area and McMichael Conservation Collection of Art is null and void."

At any rate, the minister repeats on a number of occasions that that is his wish, and now we have a new agreement, a new bill that as I understand it incorporates the duties of the founder director-emeritus. I look at where Mr. McMichael has come to over these 16 and a half years, keeping in mind where we started with this agreement. According to the documents submitted to me, the responsibilities and the duties of the founder director-emeritus are to provide counsel and advice on such matters as the improvement of the collection, aesthetics, public relations, development of policies, planning of special events at the gallery, and then, with the concurrence of the director, to represent the gallery at touring exhibits and appropriate public functions, accept speaking engagements, seek out talented Canadian artists, et cetera.

I submit to you that is a long way from what was understood in 1965 and the record is there. I do not have it with me right now, but when one reads this agreement a very clear and direct tone

is struck by both the agreement and the principals, the Hon. John Robarts representing the people of Ontario, and these incredibly magnificent and munificent benefactors, that they are creating a partnership to advance this splendid benefaction for Ontario. I ask you and this committee and the minister, how we can go from the partnership spoken of so directly in 1965 to the clear subjugation of one of those parties in this 1981-82 period. The agreement is, I think, a big part of the difficulty in the community. It is certainly a very big problem I have.

I certainly want to say to you I appreciate the difficult position in which you have been placed, but I want to ask you, because you are a man of very considerable community experience--you have, as I recall, an outstanding participation in the economic aspects of this province, you know something about the importance of public confidence in what you as a business executive might be doing or what we as a Legislature might be doing--can you appreciate, to put it interrogatively, how worrisome this is for people in the community who reduce this entire question to the worth of the word of the government of Ontario?

I say to myself, if I signed this agreement in February 1982, knowing what I now know about the worth and the history of the 1965 agreement, quite frankly I don't think I would rest very content about its future efficacy and, more importantly, I don't know that I would willingly give to the people of Ontario, through their government, something in trust on the basis of the word of people who have stood in their place and said that this agreement, which created a committee of five, would be respected forever.

It's clear to me--and correct me if I'm wrong--that this agreement that has been struck with one of the partners is a very different kind of undertaking from that entered into by that partner in 1965. Maybe that's not a fair question to ask you, but I certainly would address it to the minister. And that is the most troubling thing about this entire debate for the community out there, most of whom would consider a contribution to something as important as this art gallery.

The confidence and the worth of the word of the government are a key issue here, and I ask you: Do you think the agreement entered into this week, incorporating as it does the October 1980 description of the duties of the founder director-emeritus, is at one with the duties of that person who happens to be, in this instance, one of the founding partners of this great collection?

Mr. Taylor: Mr. Conway, I hope you will accept it in the way I say it, but I have steadfastly refused to involve myself in a discussion of the 1965 agreement or the 1972 act because I have only been here for nine years, because I believe I was appointed under the 1972 act and I was operating in accordance with the terms of that act, and I have steadfastly refused to involve myself beyond that point.

Mr. Conway: Then I would like to ask the minister, if I could, on this point: Accepting that we now have a new agreement that sets out terms of reference for the founder director-emeritus, who in this case happens to be one of the founding partners, are

you satisfied that the agreement, as incorporated in this agreement signed in the last 24 hours, the agreement under the heading McCarthy and McCarthy, February 1, 1982, an agreement that in some clear ways subjugates Robert McMichael to the control of the new director--in ways that I just read from, in a way that maintains a board that is not less than five, not more than nine--do you honestly believe that what you said that November afternoon and what Mr. McNie, more importantly, said nine years ago ought to be believed?

Hon. Mr. Baetz: Mr. Chairman, obviously, I do feel it should be believed or I wouldn't have said it. The thing you have to keep in mind here is that the 1965 agreement reflected the collection at that time, and there have been enormous changes since in the size of the collection, in public accountability for it and in the public funds involved, and I can document this if you so wish.

But quite naturally the 1965 agreement changed over the years, and even between 1965 and 1972. For instance, the Metropolitan Toronto and Region Conservation Authority was a big partner in the 1965 agreement; it was supposed to do a lot of things. It has been dropped; it's not anywhere in the 1972 act, nor do we refer to it at the present time.

The 1965 agreement referred to the collection of paintings. Over the years there have been collections of artefacts and pieces of art other than paintings. The 1965 agreement referred to the fact that Mr. McMichael would be the unpaid curator; for a long time he has been the paid curator. I can document this in further detail if you so desire, and we can present it here for the record.

But with the growth of the collection and with the increasing public involvement--this may be mentioned just to indicate the kind of growth of the institution: it grew from a six-room home on 14 acres--that was the contribution made by the McMichaels--with approximately 200 art works in 1965 to a crown agency, an art museum with 30 rooms.

3:50 p.m.

Mr. Renwick: I am always reluctant to interrupt a minister and it is extremely interesting to have the background he is expressing. We are all aware of that. I don't mind him repeating it. It does not matter particularly to me whether it has grown to be as large as the Mellon Institute in Washington. If what we are being asked to do here is to abrogate an agreement, then I would like to be told that is what we are doing. If that is not what we are asked to do, then I would like to know what we are about to do.

I have no desire to enter into an argument as to why the collection grew or how it grew or what the participating factors in its growth were. We are all very proud of that. It would not have happened if Mr. and Mrs. McMichael had not initiated the project. You can't take away from that initiation of the project by them, the contribution that has been made, by telling us it is now a very large and successful operation. I would have assumed in any way that I look at the world that the very success of the operation

would place an obligation on the government to deal with the greatest fairness and equity with the persons who initiated it.

I am always interested in hearing what the minister has to say. If you wish to continue to explain the size of this to us and the value of it and all the rest of it, that's fine, but I think it is irrelevant to the purposes of the committee.

Hon. Mr. Baetz: I don't think it is totally irrelevant, but since you do not wish to have me pursue that any further, I will be pleased to do so. But I should make one very central point in all the changes that have occurred to reflect the changing situation at the McMichael gallery. That fundamental point is that Mr. McMichael was personally involved in every one of these decisions and we have documents to prove it--every one.

He agreed to the 1972 act. He helped in drafting the bill. As I say, we will document this if you so wish. There has been nothing done over the years contrary to his wishes. Now, for an eight- or nine-month period, he may have had some second thoughts in the last few months about this. But certainly all through the piece, Mr. McMichael was involved in the changes that were made, and we will be pleased to document that.

Mr. Conway: Mr. Minister, I would like to terminate this discussion quickly, because I have some other questions for the witness. But you can see my problem. We start 16 years ago with an agreement that is between partners and the advisory board spoken of in the sections of the relevant agreement make that very clear. The words of the then Premier also make it clear, particularly items seven and eight of that 1965 agreement. An act in 1972, interpreted by the then minister in his place in the House to the people of this province, incorporates that 1965 agreement.

Quite frankly, and I shouldn't say this retrospectively, I do not know how honourable members present could have--I did not look at all the Hansards, but one of the key political aspects of that legislation affects that critical committee, which has changed in a very important way and would strike me as a significant departure, if not abrogation, of the 1965 agreement. At any rate, we have the minister's word. We then have your word eight years later that the integrity and the intention of the 1965 agreement is and will be maintained, notwithstanding that there are draft bills which make clear that it is the intention of somebody in the government to render those null and void.

You tell us there are all kinds of actions that point in another direction, but we have words everywhere from authority and from responsible people indicating that the integrity and the intention of that 1965 agreement is still with us. You were emphatic and eloquent on that point two months ago. I just simply submit to you, what is the value of this agreement in light of where this agreement leaves one of those partners more than 16 years after he began in what he thought was a partnership arrangement?

I think that is a critical question for the arts community, the government and for all members of the Legislature of this province because the confidence that people have in this government and in this Legislature has been impaired. People who have made donations to this art gallery, and others, have expressed to me very real concern--a concern which I now believe is more well founded than when they first voiced it to me--that perhaps they should think twice before making such bequests.

Hon. Mr. Baetz: Mr. Chairman, can I just interject one comment on that. I would again say that your observations would be perfectly valid and would be of concern to me, had not Mr. McMichael, all down the road, been fully supportive and co-operative in these changes. Mr. McMichael, along with government and along with this board, as other members in that committee, knew very well that the situation had changed, that the institution had grown, and that if the kind of public support that was required and that he wanted was to come there, there had to be these kinds of changes made.

Mr. Conway: All right, Mr. Minister, but let me just say in response to that, if I come to you as a citizen, as a person who is not very well versed in the political world and have this kind of a discussion--and I believe it happens all the time--and we have some kind of a conclusion to our discussions that ends in legislation, that leaves me with a worry that I have not only the minister's private assurance but I have his public statement in the Legislative Assembly that it incorporates what I want incorporated, what I believe is incorporated. I think there is a matter of trust there and that on the face of it there has been a breach of that trust. Regardless of what Mr. McMichael did down the road, I would think it would be reasonable for anyone to assume in 1972, with Mr. McNie's commitment, that their mind might be put to some rest on some of these things because his word is there for everyone to read in the November Hansard of that year.

Mr. Laughren: Could I ask one small supplementary on that, Mr. Chairman? It really is strange that one of the problems over the years, as Mr. Taylor indicated, was that basically the McMichaels wanted to exercise powers under that 1965 agreement. That is basically what they were doing as I understand it. Now you are telling us that they were a party to making that agreement null and void. It is only after a lot of agony that they came to that decision, I suspect. I think you are playing a little fast with the way events have transpired.

Mr. Chairman: Is there a supplementary?

Ms. Fish: Mr. Chairman, my concern at this point stems from what would appear to be varying interpretations of willingness, on the one hand, or stress, if I may use my own term, as I think I inferred from Mr. Laughren's remarks about Mr. McMichael's participation in the several changes that have come forward, his agreement to the change in that original partnership agreement, if I can echo Mr. Conway's remarks.

The difficulty I have is that Mr. McMichael is not before us so that we can put to him these sorts of questions as to how he perceived it, what his discussions might have been, his degree of willingness or otherwise, his sense of whether he was satisfied. I find myself in a bit of a conundrum. He indicated to the committee that he wanted to appear before the committee. I understand that he replied in writing to the clerk to that effect.

Yet this morning we understand from his solicitor that he no longer wishes to appear before the committee. I do not have the solicitor's exact words, but I inferred from his brief statement to the committee that Mr. McMichael was well satisfied with the form of the agreement with the board, with the amending bill that is before us with the amendments that the minister indicated this morning he was prepared to see to, which resulted from the mutual request of the board and Mr. McMichael.

4 p.m.

It seems to me that if we are going to be pursuing a discussion that gets into the question of whether there was involvement by Mr. McMichael and what his involvement might have been, and then further what his attitude to that involvement might have been--a willing and supportive involvement or a very reluctant, stressful involvement--I don't know where to put the questions to try to clarify some of the things that have come forward in the course of some of my committee colleagues' questionings except to put them to Mr. McMichael. Yet on the face of it, by the statement of his own solicitor, we have heard this morning that he is satisfied with the evolution of the legislation and, presumably, with the vehicle to govern that legislation.

Frankly, Mr. Chairman, I seek your direction in this regard, since we seem to be probing in an area that I am not sure is answerable, except directly by Mr. McMichael, in terms of whether he felt that the thing was done properly and maintained confidence and maintained a partnership that he freely was prepared to amend and willingly entered into, to sign or undertake or support, or whether the suggestion that has come forward through the use of some words that there has been an imposition, that he was unwilling, which would go to a question of confidence in terms of the government's action. So I ask for some assistance in this.

Mr. Conway: In that connection, Mr. Chairman, my point is simply this: I put myself in the position of a potential benefactor in this situation. What concerns me most profoundly is that we have the repeated statements of honourable members and ministers of the crown that the 1965 agreement is not being reneged on, is not being abrogated, is in no way being altered. But, unfortunately, from my interpretation--and I will quote again if I have to the statements that have been made--we have public statements from responsible ministers of the crown on the one hand, and on the other hand we have a copy of a draft bill and we now have both a new bill and an agreement that, I humbly submit, alter in a most significant way the fundamentals of that 1965 agreement.

I return to my earlier point, Given that history, of what value and with what solace and with what comfort ought we to welcome and should we respect the agreement offered yesterday in the presence of the contracting parties?

Ms. Fish: Mr. Chairman, I might finally clarify my concern, which I think has been given a sharper edge by Mr. Conway's remarks. It seems to me that the core of the thing is whether the changes that were brought forward and adopted many years ago, equally before my time as before Mr. Conway's, wherein in the spirit and intent of the 1965 agreement, which, in listening, Mr. Conway, I felt was fairly accurately described as a partnership between government and a private citizen making a very significant gift to the province of a collection and ensuring continuing involvement in that--

I go back to the point that it becomes very difficult to deal with the question of confidence. The spirit and intent of that core, which I believe Mr. Conway himself identified, were carried through with the changes of partnership, which would involve a willing participation, a confidence in and support of that which the government was doing in respect to this particular gift in the absence of Mr. McMichael to speak to that very point.

Indeed, if the core of the agreement was a partnership and if that partnership freely and willingly evolved through 1972 legislation and subsequently through more current amendment, it seems to me that is one rather positive view of the workings, the attitudes, the action between government and a private citizen making a very significant donation or gift to the province. If it was an unwilling coming along, if it was a reluctant agreeing, if it was a feeling that this was inappropriate for a variety of reasons that spoke to goals of the collection or understandings of the gift, then that puts a very different colour on it.

Certainly the things that have changed are not merely the question of the shift from an advisory committee into a board with a variety of other changes. Regarding Mr. McMichael's own position as it related to the advisory committee and the board, I certainly had the impression there was a change in position and understandings, which Mr. McMichael indeed did support. Therefore, it was in the spirit of a partnership that was evolving over time with the complete support and agreement and indeed confidence of the original donor. It was the private sector being a partner with government as the very beautiful gift donated at the outset by the McMichaels grew and evolved over those same 16 odd years that we now find ourselves in.

I don't think it is quite as simple as just saying there were changes and that that in itself on the face of it suggests there is no confidence. Surely the nut of the question is was there an agreement that was freely entered into? Was there a partnership? Did that partnership evolve with the free and willing consent and participation of both of the partners?

It seems to me the minister is suggesting very clearly that that was the case. If someone is suggesting that was not the case, I suggest the only way that can be clarified is by putting the question to the other partner, who is not at table this day and apparently not intending to come before us, and that is Mr. McMichael.

If he does not come before us this day or any other, it seems to me the only thing one can then rely upon is that clear statement made by his solicitor when he appeared before us this morning representing his client. I certainly inferred from his remarks that he was suggesting that his client very definitely supported this legislation with the amendments the minister had indicated he was prepared to bring in. Any other questions of interpretation or uncertainties that may have flared in the last eight months with the board, I gathered, had been resolved to the satisfaction of Mr. and Mrs. McMichael by virtue of the signing of the agreement and that his solicitor was so indicating to the committee this day.

Mr. Chairman: Since you have requested my guidance or opinion on the further procedure, namely, the role of Mr. McMichael before this committee, I would like to point out that we are not discussing the agreement of 1965. We have been asked to process amendments to the 1972 statutory act and also to look at a recent agreement, the February 1, 1982, agreement, and whether or not that agreement is in any way in conflict with the statutory act of 1972.

The other point is that instead of making allegations or apparently speaking about Mr. McMichael's interpretation of various past agreements in the act, it does make sense to me that perhaps if it is the wish of the committee we should request Mr. McMichael to attend. He was a key player in the whole procedure and activities relating to this amendment. He could attend along with the chairman of the board, if it is the wish of the committee that we request Mr. McMichael to appear. Certainly it would be your wish to which I as a chairman would comply. I would like to point out that the counsel to Mr. McMichael had indicated to the clerk that Mr. McMichael was under the assumption that following the agreement of February 1, there would be no need for him to appear before this committee and he had withdrawn his original request to appear before this committee.

4:10 p.m.

I am bound by the wishes of the majority of the committee. This committee had been granted the power on April 24, 1981, to require the attendance of witnesses. You have the express authority from the House to do so, and also on a motion of the chairman, to send for persons, papers and records. I would hesitate to use the extreme procedure of summoning Mr. McMichael before this committee by an order signed by the chairman. I would prefer to use a more informal request if such is the wish of the members of this committee.

On the other important aspect, about the agreement, I listened carefully to the concerns expressed by Mr. Roy and Mr. Renwick. Section 2, referring to the collection, now known as the McMichael Canadian Collection, raises an important question. That particular statement contravenes the act of 1972. I feel that the committee should look at this because it may require another act to amend section 1.

I would point out that if there is any amendment to the act, an amendment may not amend sections from the original act unless

they are being specifically amended in a clause of the bill before the committee. We have nothing in the clause of the bill referring to section 1. I wanted to make this clarification on the procedure that I, as committee chairman, would be bound with.

Mr. Conway: I want to say that I accept entirely what Mr. Robinette said here this morning. I personally have no desire, given the expressed intentions and wishes of Mr. McMichael, to have him appear. I think the member for St. George (Ms. Fish) has taken my principal concern and come to a conclusion that I do not think is in any way logical.

I simply want to point out again I could not care less in this case about Robert McMichael or Signe McMichael. I am concerned, in this case, about the public. We have statements by ministers of the crown that agreements have been made and they are going to be kept. We have all kinds of actions which clearly indicate something quite to the contrary.

The member for St. George says, "If the contracting parties agree, what is the concern?" My question to that is, what is the value of all these agreements that so much trumpeting is being offered? My concern is simply representing the public interest that three contracting parties in this arrangement have come to an agreement.

The question I think this committee has to adjudicate on its own, with the help of those witnesses who want to come and appear--and I note that our current witness has been quite free in saying that there are some things that he just does not have an involvement in and he is not going to bother answering. I think that is his entitlement. What the committee has to determine is, is this agreement that has been entered into by the three contracting parties in the public interest? That is the concern I have with respect to the public statements in the Legislature by consecutive ministers of the crown with respect to an agreement and actions relating to that area of activity that certainly indicate quite a different conclusion.

Mr. Chairman: I would like to ask again if it is the wish of the committee to request the attendance of Mr. McMichael as a witness here.

Mr. Roy: Surely the man had his counsel appearing here. I think he has already indicated that he is not interested. I would suggest very strongly that we not compel him to attend. Surely we are discussing something he is aware of. He has had his counsel here. We should not, at this point, compel him to attend; surely that is not necessary.

I say to my colleague from St. George I think Mr. Conway is entitled to ask the minister why he says certain things when, in fact, the legislation does not appear to be doing these things. In other words, he is seeking an explanation from this minister and his predecessors. That is fair ball, it seems to me, without involving Mr. McMichael. I think there is general consensus here through his counsel that he has agreed to a number of these things

and he has put his signature on it. What is he going to answer? That he has agreed to it? Let us not compel him to attend. Surely the minister is quite capable of answering the questions put to him by Mr. Conway.

Mr. Chairman: Let me ask you a second question, since the relevance may be such, if I may--

Ms. Fish: Since part of this has made reference to me as perhaps misconstruing Mr. Conway's quite correct questioning of the minister, let me simply make clear that I was in no way suggesting there should not be questions of the minister. I was simply taking together some of the points that I felt Mr. Conway was making and some of those made by Mr. Laughren to suggest that perhaps part of the missing element was the participation of Mr. McMichael.

Mr. Conway has now made very clear that is not his concern, that his concern is the agreements and the amendments before us in the public interest and that is what we are going to debate. I am content with that. My only concern would be that if we are going to be getting into questions about Mr. McMichael's willingness or unwillingness or his participation or interpretations, whether it was with anger or with gladness, then it seems to me that those are things that are not answerable except by Mr. McMichael.

I am delighted to understand the law and I would hope that Mr. Laughren, part of whose remarks led me to that point of the question that I put to the chairman, would equally agree with the position Mr. Conway has taken, that we are not going to be examining that question and therefore the conundrum that I was in about an inability to put questions to Mr. McMichael is obviously resolved.

Mr. Chairman: I would like to complete. I had a second question and I would like to be guided by the committee. Should Mr. McMichael express a wish to appear before this committee, would we be flexible enough to allow him to appear although a deadline for submissions was made two weeks ago?

Mr. Conway: I have a couple of things I would like to get back to and then let other members get on with their questions. I am going to quote Mr. Taylor, and I apologize for having that little diversion there, on the people's radio network Sunday morning. I am going to quote just a couple of things from page 20 of the transcript, for which I must thank the Minister of Culture and Recreation, who not only provided it but threw it out in glee today. It really saves me a lot because I can assure you, Mr. Minister, you are much less helpful.

Mr. Steve Wadhams, the interviewer, on page 20 of the transcript of the CBC Sunday morning documentary on crisis at Kleinburg, says:

"Wadhams: Clashes with the staff, muddled records, all of this sapped the patience of the board of trustees and the government of Ontario. But it was another issue entirely which was to prove crucial and lead to the resignation of Mr. McMichael and the closing of the gallery in October 1980, an issue of life and

death--fire safety. Amid his other troubles, Mr. McMichael was engaged in a running battle with the local fire department at Kleinburg.

"Voice: March 8, 1977. Dear Mr. McMichael: In the interest of public safety within the building, it is recommended that the following changes be made to comply with the building code ...

"Voice: October 6, 1978: Dear Mr. McMichael: A fire inspection was made on September 27 and the following conditions must be rectified within 90 working days ...

"Voice: September 7, 1979: During my inspection, a number of items were still outstanding. I regret that legal action is being instituted by the issuance of a fire marshal's order. Signed, R. E. Greenfield, deputy fire chief," He is from the town of Vaughan, I think, but I am not sure of that.

"Wadhams: As chairman of the board, Mr. Allyn Taylor was responsible for the safety of the public and the safety of the paintings. Mr. Taylor believes it is not fair to criticize him on this issue.

"Taylor: The board that was appointed in 1972 and that commenced its discharge of responsibilities in April 1973 had nothing to do with the erection of any of the buildings; the buildings were all in place before we came into play. Mr. McMichael had assured us time and again that they were safe, that they had been built according to recognized standards at the time of construction. We had accepted.

"Wadhams: In May 1980 the Toronto firm of architects, Klein and Sears, reported on their independent study of fire safety at Kleinburg. The report was not comforting," and you know the rest. There was a lot of concern, I think at the board level, certainly later on at the community level, and I happen to think at the ministry level, that this very popular, much-visited gallery was a fire hazard of some kind. Do I voice properly the board's concern in that connection?

4:20 p.m.

Mr. Taylor: I think the question is very much to the point, Mr. Conway. The answer I give is that Mr. McMichael on many occasions had been questioned informally, if you will, by board members as to the question of fire safety, and he had always reassured the board that buildings had been put up according to building standards and that there was no reason to be concerned about fire hazard in the buildings.

It wasn't until--I have the material here and I can provide the answer very easily by reference--I believe August 1979 that I received a copy of a letter from the minister to Mr. McMichael asking for a report on some changes the fire department of Vaughan had asked for in the buildings. Mr. McMichael at the board meetings said, "Well, you know, this is bureaucracy. They have a lot of little things they feel should be done. We are being sensible in response to it, but I can assure you the buildings are safe and there is nothing for the board to be concerned about."

It wasn't until the Klein and Sears report came out in May 1980 that we realized the full import of the fire hazard in the buildings. I received the report on, I think it was May 22, 1980, and it was 11 o'clock in the morning. I well remember I read the remarks of Klein and Sears in phase one and I telephoned the gallery and I got Mr. McMichael and Mr. Court on separate phones, as I remember it. I issued instructions then that by noon that day there was to be a security guard on the buildings.

We developed in the next few days a pattern of security and that applied, indeed, until the gallery was closed last October. It was late in the day that we found it. I can tell you if there had been a fire and if one of the lives of the 120,000 students a year who go into that building or one of the other 150,000 adults who go into that building had been lost, it would have been something far more important and far more significant than anything that has been discussed here today.

Mr. Conway: I appreciate that and there is only one problem I have with that. Again, I am a politician, I am not a manager, and I hope I'll never be the latter, but you have had a long and extensive and very distinguished career in management. Earlier in the discussion over the legislative mandate and its clarification, it was obvious to me that, certainly from the mid-1970s, there was a bit of tension developing and you were concerned about clarifying that matter. We have discussed how that came to pass. I presume that during the course of the 1970s from time to time the board was hearing: "That's not quite as it should be. You should be doing certain things." That made you then ask Mr. McMichael, "Is it so?" and you took his word until this Klein and Sears report in 1980.

I guess what I find strange about that, from a board that was very conscious of and anxious to deal with its management function, is that for those eight years you accepted the word of a man whose expertise was in an entirely different area. By this point, I think it is commonly understood that there were other management problems. I just put myself in the position--why didn't somebody at the board level seek independent confirmation of what Mr. McMichael was telling them? It seems to me a likely thing to do, to ask the man who built the buildings whether they were safe.

Given the responsibility that devolved on the board and the growing concern, why did it take the Klein and Sears report, eight years after you took over, for you to really jump on this matter? And I give you credit for doing that. You certainly did it with great gusto and speed, but just relying on the word of a man who is not a fire expert on something as vital as this for so long a period of time is passing strange to me.

Mr. Taylor: Mr. Conway, I respect the question and if our positions were reversed, I would ask the very same question and the only answer I can give you is that we were moving from 1973--and it was indeed a period of seven years--from family control to professional management. We were trying to do it in such a way as to maintain a balance.

Mr. McMichael was insistent that the condition of the buildings, from the standpoint of fire hazard, was entirely satisfactory; that he had held many discussions with various fire officials on specifics; and that those specifics had been taken care of. You can then ask, quite properly, why did we not bear in and ask for more information? It was simply and only because he was the director and we were looking to him to conduct the management of the operation on behalf of the board. The subject did come up many times, but we were always given sufficient assurance that it was not pursued until the Klein and Sears report came out.

Mr. Conway: I appreciate what you say about the transition from the private to the public, but I recall, again from

"Taylor: And in July 1974"--about 15 months after the board had taken over--"to be exact, on July 22, I sought a meeting with the Premier, and I told him of the difficulties I foresaw in melding the move from a private collection to a public undertaking, and I well remember after a lengthy conversation he said, 'Well, Allyn, be patient and do the best you can.'"

On something as vital as fire safety, I do not know how it got lost in the shuffle. The net result, the net obligation, the net liability to the board was there and was the same.

Mr. Taylor: The voice inflection that the Premier put on that day was much the same as the one you have just placed on it. I would simply say that in July 1974 there was no cause to raise the question of the safety of the buildings, and I did not raise it with the Premier. We had no specific cause to raise it unless we had probed further than we did into the condition of buildings that were relatively new and that we were assured, time and again by the director, had been built according to fire standards.

Mr. Conway: Finally, Mr. Taylor, in the eight years that you have been chairman of the board and a member of that board, how would you describe the relations of the board with the government of Ontario as represented through the ministry you deal with, the Ministry of Culture and Recreation, on the question of budget year to year?

Mr. Taylor: I have no hesitation in answering that at all, and I hope you will believe that I am not doing this as a plesantry to the government. We could not have had more co-operation at any time than we have had from the government of Ontario.

Mr. Conway: There was never a difficulty getting moneys for things that the board wanted?

Mr. Taylor: I do not think I will subscribe to that because there is good reason to know that there are only so many dollars to go around; I do not mean that there was an open cheque. On the other hand, there was never any indication to us of an unreasonable attitude to requests that were made to the government of Ontario for moneys for the collection. I speak as a taxpayer in saying that. I never had any reason at all to criticize either Mr. Baetz, his predecessors or the deputies on that score.

Mr. Conway: You have been a very helpful witness, and I appreciate your enduring my long minutes of sometimes perhaps not immediately relevant questions.

Mr. Kennedy: I have one question I would like to address to Mr. Taylor, and that is casting not back but forward. I notice in all the documentation it mentions art works and objects. I was wondering if you could enlighten us somewhat on the interpretation of "objects" and how broad you see the gallery going in the acquisition of various artefacts over and above the arts and paintings which everyone understands. Do you see a change in direction?

Mr. Taylor: A change in direction took place very quickly after 1965, and I think with reason. Under the 1965 agreement there was a very restrictive list of objects of art that could be purchased, paintings. Mr. McMichael, quite rightly, in the late 1960s started to move into Inuit art and, subsequent to that, into Indian art. A great portion of the Inuit art was in the form of sculpture.

4:30 p.m.

Mr. Kennedy: Do you see this continuing? I am just trying to get a look into the future to see how it may broaden and attract broader interests. I am always interested in art.

Mr. Taylor: I am glad you raised the question. With the permission of the chairman, I would like to ask our new director to speak on this. He is hesitant to involve himself in these discussions, I know, but he is so knowledgeable on this subject. I feel very sensitive on this point, because, for some reason, the draft bills that have been dealt with by the Legislature in the last few months seemed to have given cause for people who have perhaps been looking for reasons to attack the board and government, to draw a red herring across the path and say: "Oh, you are going to entirely change the character of the collection. You have no respect for what was started."

Nothing could be farther from the fact. There has never been any thought on the part of any member of the board to do other than to respect the character and the atmosphere of the collection as it was commenced. Indeed, we are pursuing that. Mr. McMichael had an amendment that he wanted, which we readily agreed to. I would like to ask Mr. Bell to speak on this.

Mr. Chairman: Mr. Bell, would you take a seat?

Mr. Bell: I recall a letter that the chairman wrote to the Hon. Mr. Auld when he was Minister of Colleges and Universities, where he, I believe, was responding to a query from the minister about an acquisition policy for the McMichael Canadian Collection. The content of the chairman's response is probably pretty seminal to Mr. Kennedy's question. Mr. Taylor said--and I am going to paraphrase here--that the public perception of the collection was somewhat different from the reality of the collection; the public perception being that it was primarily a collection of Group of Seven paintings.

I think Mr. Taylor was rightly identifying the fact that the collection of art and artefacts--paintings, sculpture, drawings, prints--is quite a vast-ranging collection of material. If I recall correctly, there is a substantial component of antique Canadian and American glass. There is a substantial component of what we would call generally antiques, furniture and things of that nature. Certainly there are the Eskimo or the Inuit drawings and prints. There is the stone cut for the printing of one of the Eskimo or Inuit prints. There is a lot of three-dimensional Inuit sculpture. Any of you who have been there will recall that. The point is well made that in reality it is now quite a broadly based collection.

In reviewing some of the material in the context of trying to determine what the extent of the collection was and is right now, we were able to determine that in addition to the seven painters plus a couple of others who constituted the Group of Seven over a period of years, and some of the contemporaries that were known, like Emily Carr and David Milne and J. W. Morrice, et cetera, there are somewhere over 70 other different Canadian artists represented in the collection at the present time.

I think that was proper because we only understand--and I am speaking as a historian here more than anything else--the real contribution that the Group of Seven made to our national understanding against the background of what was going on at the time. I would hope that the acquisition policy of the collection will continue in the future to develop that background so that we will be able to see in an enhanced way what the special contribution of this group of painters has been, but also be certain that we are presenting what I have called in the past some degree of truth in the history of our visual arts.

Mr. Kennedy: Thank you very much. That was my question, Mr. Chairman. I certainly support the interpretation of the board of that direction laid out in the legislation which says the acquisition of works and objects that are consistent.

Mr. Kolyn: If I might, Mr. Chairman, I would like to go back to Sean's questioning in regard to the original buildings between 1967 and 1972. It certainly seems to me that when we're using public funds we should be following the national building code and things like that. Did we use a general contractor to make sure that everything complied while we were building those buildings on the site?

Mr. Taylor: I believe there is some reason for question on that score, sir. I would, with permission of the chairman, ask if Mr. Michael Noon, the chief architect for the ministry, would speak to it.

Mr. Chairman: Would you please take the witness seat, Mr. Noon?

Mr. Conway: Chief architect of the ministry?

Mr. Noon: No.

Mr. Chairman: Not of the ministry.

Mr. Noon: No.

An hon. member: Consultant?

Mr. Noon: Thank you, Mr. Chairman. Maybe I can correct the earlier impression. I'm not the chief architect of the ministry. My name is Michael Noon. I am director of the grants administration branch.

Mr. Taylor: You have always been masquerading.

Mr. Conway: You just sent out a hell of a pile of cheques.

Mr. Noon: I am an architect by training, and I'm a member of the Ontario Association of Architects and a member of the Royal Architectural Institute of Canada, so I do perform some advisory function with other architectural staff of the ministry. With regard to the development of the 1972 addition, which was the last addition and was, I guess, looked after under the auspices of the Ministry of Colleges and Universities, I think it was assumed at that time that the development of a building project followed all the applicable codes that were in existence and that the responsibility was with Mr. McMichael and his architect. He had engaged a professional architect in complying with those codes, both the local building standards and any fire codes applicable. It is apparent after investigation over the subsequent years that this may not have been the case.

Mr. Kolyn: Shouldn't his architect have informed him of the building codes and that if it was to be built it had to be built in a specific way?

Mr. Noon: Yes, that's my understanding.

Mr. Kolyn: Who would have the right to change an architectural drawing?

Mr. Noon: The owner could make changes during construction, but that construction would have to be supervised by the architect. It's my understanding that some of the building was built not according to the drawings and not according to the drawings that had been stamped "approved," as noted by the local building department.

Mr. Kolyn: Would it be fair to say that some of the reconstructions going on now are to correct some of the deficiencies that we had in 1972?

Mr. Noon: Yes, quite a lot of the alterations and construction work that is going on now is to correct those deficiencies. I must point out that there has been some reference to complying with all of the codes and standards. The ministry and the architects have had a great deal of good liaison with the Ontario fire marshal and with the local building department and the local fire inspector in looking at this building, which is a very complex building and was built in many stages, and at its redesign

to achieve safety within reason.

4:40 p.m.

Mr. Kolyn: Are you satisfied that in the future if we have any extensions or buildings they will be built under the code? Is a mechanism in place so this couldn't happen again, as we had in 1972?

Mr. Noon: Yes, I'm very satisfied that that mechanism is in place, that all of the applicable codes should be--

Mr. Renwick: Just on that point, I'm not quite clear in your responses. Are you saying that the buildings as they stood in 1972, including the 1972 addition, did not comply at that time, or do they not comply as of some subsequent date?

Mr. Noon: They certainly do not comply with today's standards. It's my understanding from staff examination of the drawings that they did not entirely comply with the standards at that time. The drawings that are in the possession of the building department are marked "Approved as noted" and that the construction should comply with the national building code. But an examination of that code related to the drawings and the building as it stands now shows that in fact it did not comply even at that time and that changes were made during construction.

Mr. Renwick: Did the national building code apply to those buildings?

Mr. Noon: The national building code applied at that time.

Mr. Renwick: At that time.

Mr. Conway: Does the ministry operate galleries in other parts of the province that have the same difficulty, or is the McMichael building, in so far as its shortcomings in this respect are concerned, unique among all those public buildings that are in the same category that have an association with your ministry? Are you aware of that?

Mr. Noon: Well, I'm aware that there are other galleries and museums in the province that certainly were built at one time, that there has been a great need to bring them up to standard. As you know, with the Royal Ontario Museum there is a reconstruction going on where standards are now being--

Mr. Conway: My point is supplementary only to Mr. Kolyn's question. I'm right in assuming that the McMichael gallery was not alone in failing to comply with standards you identified in so far as art galleries and museums are concerned.

Mr. Noon: I didn't say that. I did not say that it was not alone in failing to comply with standards in effect at that time; what I did say was that it's not alone in failing to comply with standards at this time. It apparently didn't comply with standards at that time, either, and I think that most of the other buildings we talked about--

Mr. Conway: But you don't know for sure.

Mr. Noon: No.

Mr. Roy: When did you find out that it didn't comply with the building codes at that time?

Mr. Noon: About the beginning of 1980, after the Klein and Sears study was done, we were quite concerned because Mr. McMichael had been insisting during the meetings of the task force that it did comply. We did an inspection of the drawings; it's not a usual practice, but we did an inspection of the drawings and found that it did not.

Mr. Roy: You were sitting here and you listened to the questioning of Mr. Taylor by Mr. Conway. And I sat here listening to this and having in mind the jurisdiction that was given the board and its chairman as a member of that board. I have some difficulty understanding that. I can see if Mr. McMichael keeps saying: "Well, the building complies," but in view of repeated warnings by the fire--

Didn't it say that in 1977, 1978 and 1979 the fire chief kept making threats about its not complying? I have some difficulty, in the light of that, understanding why you would accept Mr. McMichael's word, knowing that he certainly has no expertise in administration and so on.

Mr. Noon: The warnings of the fire chief were really only made known directly to the ministry by the Ontario fire marshal in May 1979. He urged us to take some action at that time. Before that we had also accepted the assurances of Mr. McMichael that the building did comply and that whatever requests were being made of him were in fact being effected.

Mr. Roy: Forgive me, but can you give me an example of, for instance, one aspect in which it did not comply? What were some of the major things that it did not comply in?

Mr. Noon: The whole question of exiting from the building.

Mr. Roy: Yes. Is this not something that is obvious, that the exits don't comply? Would you, as an architect, not see that by visiting the building?

Mr. Noon: Yes, but I did not visit the building to inspect it until such time as it was made known to us.

Mr. Roy: Are you talking about 1979-80?

Mr. Noon: Nineteen eighty, yes.

Mr. Roy: I want to say this more to Mr. Taylor than I do to you--forgive me if I appear to be unduly harsh because we are looking at you in retrospect here--I have some difficulty, in view of the repeated warnings that you were aware of and that the board was aware of, in view of the number of people visiting that

gallery, your great concern about fire safety in that place, that nothing was done or you accepted Mr. McMichael's assurances--

Mr. Taylor: I may, sir, there were not repeated warnings brought to us. Mr. McMichael was asked by members of the board from time to time whether indeed there was any fire problem. There were letters from the fire chief--I haven't the exact letters here--pointing out specifics. I remember on one occasion a letter I think in mid-1979 or May 1979 that pointed out four things that were required. He was very specific in saying there are four deficiencies. That was the first time that the matter was brought to the board in a formal way. Mr. McMichael said, "Two of them are now being done and are under way." He had written the fire chief saying so. He said, "The other two are under negotiation."

It was at that time, when somebody asked him what he meant by "under negotiation," he said: "You know the bureaucracy and you simply just cannot give in to all their demands. These buildings were built according to fire safety standards," and that was the case.

Mr. Roy: What you are saying is that the board was not aware. I am just looking at the record that Mr. Kolyn used, that is the record from the CBC program Sunday Morning. It states here that letters were written to Mr. McMichael on March 8, 1977. Are you saying the board was not aware of this?

Mr. Taylor: I cannot answer yes or no on that specific letter. I do not know.

Mr. Roy: Or October, 1978?

Mr. Taylor: That is in the same position.

The first real cognizance that I had of the situation that certainly required attention by the board and all concerned was a letter I received--I guess you, Mr. Minister, were in office at that time--a copy of a letter that you had received from the fire chief from the township of Vaughan saying, "The buildings will be closed down unless my requisitions have been complied with within a period of 60 days."

Mr. Roy: The October 1978 letter talks about "rectified within 90 working days."

Mr. Taylor: That is the one.

Mr. Roy: We are talking something as far back as October 1978.

Mr. Taylor: Yes, that is right. That is earlier than I thought. I referred to 1979 and my memory is faulty in that respect. Was it 1979?

Mr. Conway: Is it possible, Mr. Taylor, on this point which does strike at one of the issues of some concern to the government and I assume to the legislative committee, for you to check the minutes of the board to see what you can identify by way

of the beginnings of official notices--

Mr. Taylor: It is entirely reasonable and I will be happy to see that that is done, Mr. Conway.

Mr. Roy: You understand our concerns.

Mr. Taylor: Of course I understand, Mr. Roy.

Mr. Roy: If the board was aware of complaints made by fire inspectors or the fire chief and it just kept accepting assurances from an individual who may be well-meaning--and for all Mr. McMichael knew, he may have thought that the building conformed with the building codes, he may have been sincere--but after a while you say: "Maybe we should do our own investigation here because this is a pretty important matter. We get a lot of visitors here. It is a pretty dangerous situation."

Mr. Taylor: I think the question is very much to the point. That is all I can say. All of us on the board are conscious of the fact that if we were to reverse the clock we would have moved more firmly.

I think in fairness to Mr. McMichael we must say this, aesthetics held the primary spot in his thinking. I am perfectly sure that in his own mind the buildings were safe because he loves the buildings. I am sure he had rationalized, if you will, to the point where he was convinced that there was no need for anything by way of improvement in the fire standards. But the aesthetics of the building were so important to him that any changes that affected the aesthetics at all caused him great concern. I am not in any sense moving away from the responsibility that I and the entire board had on this fire question, and I do not think that your question is out of order at all. I will be happy to get you something more specific if I may have until the morning on it.

4:50 p.m.

Mr. Renwick: Perhaps on the very matter that Mr. Roy has made you would, in your search overnight for information about it, refer to your statement of November 24, 1981, on page two, which states, "The undersigned trustees present the following facts..." Then you set out a series of facts related to the condition of the collection of the buildings. I would be very interested, along the lines that Mr. Roy was raising with you, of knowing when you had knowledge of the matters which are set out in your statement as facts.

Mr. Taylor: May I ask, Mr. Renwick, what is that document?

Mr. Renwick: This is your statement of November 24, 1981, on behalf of, and I believe signed by, all of the directors other than Mr. and Mrs. McMichael. I am particularly interested, for example, in: "The undersigned trustees present the following facts: 1. Over a period from 1977 to 1979, the Vaughan fire department documented serious inadequacies in the building. The collection was faced in September 1979 with the threat of legal action by the issuance of a fire marshal's order."

I would like to know when the board of trustees was seized with knowledge of that information when you have the following statement on page three, "The direction of all the activities of the collection had been delegated to Mr. McMichael as director." I am just concerned about the knowledge of the board, where the board fits in from the time of its appointment in 1972 until the series of events which commenced with the various studies being commissioned. There is a long period of time there. I would be interested to know to what extent the board was knowledgeable about these matters.

Mr. Taylor: Only in the matter of fire safety, or are you speaking in a more general context?

Mr. Renwick: You itemized four items. I am satisfied for the moment with those four items--if you are aware of this.

Mr. Taylor: I am sure I am. I have not got it in front of me.

Mr. Renwick: You are quite welcome to have mine.

Mr. Taylor: Thank you very much. That will be helpful.

Mr. Chairman: Before I entertain a motion to adjourn, I would like to inform the members of the committee that Mr. Taylor will be available tomorrow morning at 10 o'clock, Mr. Renwick, if you wish to continue your line of questioning.

Mr. Conway: Mr. Chairman, I really appreciate the witness's willingness to supply us with some information, and I know it will be very helpful. One of the questions I had intended to ask does involve information, and I might, with your indulgence, ask it now.

Mr. Taylor, I asked the question about budgetary submissions from the board to the ministry over the period of 1972 to 1981. Would it be possible for you to take a look at those and see if they might be made available to the committee? You said the relations were good, and it is public money we are talking about. I am just wondering if the committee might be able to have a look at the budgetary relationships between the board and the ministry.

Mr. Taylor: Mr. Conway, would it be in order for me to suggest to the chairman that that information should come from the ministry?

Mr. Conway: That is information I would like to have, if possible.

Mr. Chairman: Mr. Minister, could you provide that information? Is it available?

Hon. Mr. Baetz: We will certainly try our level best. I think it can be provided.

Mr. Chairman: I would like to inform the members of the

committee that three additional witnesses have indicated that they would like to appear before this company. They are Mr. David Newlands, the Kleinburg and Area Merchants and Tourism Association and the Friends of the McMichael Gallery. A further two witnesses have not indicated as yet and we will know tomorrow from the counsel for the Professional Art Dealers Association of Canada and the Ontario Association of Art Galleries.

My apologies to Mr. David Newlands who has been patiently waiting here--we did expect he could have appeared today. If we could agree on an agenda and Mr. Taylor could be available at 10 o'clock, perhaps at 11 o'clock we could ask Mr. Newlands to appear before the committee. In the afternoon we could start with the Kleinburg and Area Merchants and Tourism Association and if the time allows the Friends of the McMichael Gallery.

Mr. Renwick: Mr. Chairman, may I speak to that so that we do not inconvenience the witnesses any more than is necessary. I think without raising the specific matter again that my colleague Ms. Fish raised, I am having serious problems about what the role of the committee is and how we should deal with it. There is certainly a public aspect of it that we have to deal with but I am not certain what the content of that public aspect is at the present time. It is for that reason rather than being in the position of Mr. Taylor that he be here again as chairperson. What I really want to do is to try to sort out in my own mind what we have to accomplish in this committee. I am not at all clear. Perhaps some of my colleagues are and could help me with that.

Mr. Chairman: At the beginning of our meeting this morning, Mr. Renwick, we were informed that an agreement had been settled. We had witnesses who had been scheduled and who had indicated they would appear before the committee. It would not have been proper for us to proceed without informing them of the changes, and having informed them they still indicated their intention to appear.

Mr. Renwick: I understand. Perhaps I have not made myself clear about it. I am not certain of the impact of the agreement between Mr. and Mrs. McMichael and the board chairman on behalf of the board on the role that this committee is to perform. I would like to find out what we think we are going to achieve in the next few days without having any knowledge of the content of the presentations. If the committee is in agreement that Mr. McMichael is not going to be called then I think we have to sort out what the curtailment of our function is with respect to the bill that is before us.

Mr. Chairman: Our purpose is to proceed, having heard the witnesses, with clause-by-clause discussion of the bill, which includes two additional amendments which flowed from the agreement of February 1 which was announced this morning. The purpose, obviously, is to establish a working relationship between the board of trustees and the founder director-emeritus. Apparently this has been agreed to and there is harmony in the agreement.

It does involve two amendments to the present bill and it involves a separate agreement. I would certainly like to have some

indication from the members of the committee whether that agreement constitutes the element of the naming of the collection--any conflict with the 1972 act.

Mr. Renwick: That was only one aspect of my concern. Let me try again. I am anxious to know that as a result of the work of this committee, and ultimately of the assembly when it comes back, a statute is going to be passed amending an existing statute. That is the end result. It seems to me to be extremely important that this committee, to the best of its ability, answer the questions that are still left hanging with respect to the original agreement and the interpretation of the mandate of the McMichael Collection Corporation and with respect to the impact of all the various statements that have been made in the last six months about this matter.

In summary, what I am saying, and what I sensed on Sunday morning when I listened to that program, is that this committee was the catalyst that forced an agreement, for whatever the reasons were. If the committee had not been sitting today, it is unlikely there would have been an agreement. The very existence of this committee forced an agreement. There are a lot of good agreements that come around by force. I am not arguing that. I do not want to interpret that.

5 p.m.

Mr. Chairman: There is speculation and interpretation in your comments.

Mr. Renwick: But the effect of that agreement means that I, as a member of the committee, have not had an opportunity, even if I had been here this morning--and I was not able to be here this morning--would not have clarified in my mind what the effect of that agreement is on what we are saying we are going to do. The minister has indicated this agreement really is not terribly important because it is really there anyway, but if they want these matters included or not included, then that is fine with him, which is much as to say that the agreement does not affect the work of the committee. The significance to me of it is that what happened under the pressure of this committee meeting is of substance, and that the world has changed since January 31 with respect to our work on this bill. I have not absorbed what that change is yet.

Mr. Chairman: If I can simply comment, if there is any impact of the committee and the fact it was to meet to discuss and proceed with passing these amendments to the bill, it is that we had a positive resolution to a situation of--

Mr. Renwick: Let us not qualify it. We have what appears to be a resolution of a problem. Let us not say it is positive or negative. Let us assess what we are trying to do here. To put it bluntly, Mr. Taylor said that from 1972 on he ignored the 1965 agreement. It was not relevant to his concerns. I am not cross-examining Mr. Taylor. He said in substance that was not part of his concern.

We have a bill that was in draft form, which we did not see,

but which was withdrawn, abrogating that agreement. We are now presented with another agreement on some very isolated items that the minister says are not terribly important, in his view, because they were covered anyway. I would like to know whether the bill we end up with is going to leave the 1965 agreement intact or is going to revoke it. How is it going to be dealt with? In addition to that, we have this agreement, as of February 1, which refers to another agreement, the agreement of November 1980.

I have not been able to absorb what that means, but I can assure you that, if we end up with the way the proposal has been put to us by the ministry, the bill will look like a shambles and will not resolve anything. It will be a complete shambles. From the point of view of the public understanding, what now is the role and function of the corporation on the one hand? What is the position of Mr. and Mrs. McMichael on the other hand? We will have been, as perhaps the government wishes, sweeping the major issues under the table. I am not interested in a debate and argument about the issues. I am very much interested that the legislation that comes out of this committee, that goes back to the House, says what it intends to say, and does not leave a lot of unanswered questions.

Mr. Chairman: I could conclude from your remarks you are insinuating that, following the passage of the amendments to the act of 1972, a relationship will continue to exist between the board of trustees and Mr. McMichael and that inherent in this relationship there may still be questions as to possible conflict that may arise in terms of a bill that does not specifically clarify perhaps elements of other agreements that provided the forum for such conflicts. In other words, perhaps the perception or the reaction of Mr. McMichael to the agreement and his comments would be something that a committee would like to hear.

I did indicate earlier that, if the committee or any member of the committee feels that in order to answer some of the questions you have raised today, it is important to listen to the comments and the reaction of Mr. McMichael, I personally find it would be very important to hear his views because he will continue to live with an amended statutory act that will be affecting the public interest and the effectiveness with which the gallery will continue to operate.

From that point of view, I reiterate I personally feel the committee members should seriously consider making an informal request to Mr. McMichael, who I am sure would be willing to appear if the committee so desires. I cannot answer speculations. We have a short bill to be processed and I cannot, as a chairman, answer what may be happening with this. There are two amendments and there is an agreement. The only comment I can make is that I did ask the committee whether they wished to have Mr. McMichael appear.

Mr. Renwick: My point is not directed towards that question. I am still trying to sort out what the bill will look like when somebody picks it up and tries to read it in relation to the 1972 act. Perhaps the minister could answer that, because if I heard Mr. Taylor correctly--and again, Mr. Taylor, I am not engaged in an inquisition, I just want to clarify--he indicated that he didn't consider from the time he accepted the post as chairperson

of the McMichael Canadian Collection that he was involved with the 1965 agreement, and that it has been a serious problem ever since with Mr. McMichael asserting rights under the 1965 agreement that he, Mr. Taylor, didn't feel were part of his responsibility and then indicating, I think, that if this bill is passed it will have, in effect, the result of abrogating the 1965 agreement. The way we will be abrogating it will be to use the February 1 agreement and introduce an amendment into the bill that refers to a November 1980 agreement, and I think that will be extremely confusing.

Mr. Chairman: We would have to hear the comments from the ministry's counsel and perhaps the counsel to the board of trustees to come to such a conclusion, but I can only say that we have been asked to process a short bill. Whatever the implications of the results of the amendments to the bill, I don't know whether anyone on this committee can speculate as to what may happen. We can only wish that it will provide the type of security to the purposes set by the board and the trustees and ask that they protect the public interest and that the collection be--

Mr. Renwick: That's ultimately what I am concerned about.

Mr. Chairman: I will entertain a motion to adjourn. We will ask Mr. David Newlands if he could be here for 11 o'clock, and we will try to continue further questions of Mr. Taylor. I thank you Mr. Taylor, Mr. Solway, Mr. Bell and Mr. Noon.

Mr. Conway: Our illustrious chairman asks for a motion to adjourn. I happily so move.

Mr. Chairman: All right. No objections?

Motion agreed to.

The committee adjourned at 5:10 p.m.

LAZON
XC 12
S 78

S-3

Governing
Publication

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

WEDNESDAY, FEBRUARY 3, 1982

Morning sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Shymko, Y. R. (High Park-Swansea PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Conway, S. G. (Renfrew North L)
Dean, G. H. (Wentworth PC)
Edighoffer, H. A. (Perth L)
Fish, S. A. (St. George PC)
Jones, T. (Mississauga North PC)
Kennedy, R. D. (Mississauga South PC)
Kolyn, A. (Lakeshore PC)
Laughren, F. (Nickel Belt NDP)
Renwick, J. A. (Riverdale NDP)
Roy, A. J. (Ottawa East L)

Substitutions:

Lane, J. G. (Algoma-Manitoulin PC) for Mr. Jones
Pollock, J. (Hastings-Peterborough PC) for Mr. Gillies

Clerk: Arnott, D.

From the Ministry of Culture and Recreation:

Baetz, Hon. R. C., Minister
Court, J.P.M., Arts, Heritage and Libraries Division
Forsyth, B., Senior Architectural Advisor, Planning and Technical
Services Branch
Noon, M., Director, Grants Administration Branch

From the Ministry of the Attorney General:

Williams, F. N., Legislative Counsel

Witnesses:

Bell, M., Executive Director, McMichael Canadian Collection
Solway, H. H., Barrister with Goodman and Goodman; Counsel for Mr.
Taylor
Taylor, J. A., Chairman of the Board, McMichael Canadian Collection

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, February 3, 1982

The committee met at 10:14 p.m. in room No. 228.

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

Resuming consideration of Bill 175, An Act to amend the McMichael Canadian Collection Act.

Mr. Chairman: I call the meeting to order. I would say to the members of the committee, unless there are reservations, there is an agreement by the witnesses to appear at the following times today: Mr. Taylor, as agreed yesterday, will begin at 10:15. Mr. David Newlands is with us, and we had tentatively indicated to him that 11 o'clock would be the time for his appearance. The Kleinburg and Area Merchants and Tourism Association appearance is for two o'clock in the afternoon followed at 3:15 by the Friends of the McMichael Gallery.

If there are no objections, and there aren't any from the witnesses, then perhaps we could try to keep to the time frame, if possible, with these witnesses.

Mr. Conway: Can we turn up the heating here, Mr. Chairman?

Mr. Chairman: As the deliberations begin and continue, I am sure the heat will increase proportionately with the time. On the list of questioners, I have Mr. Renwick, who indicated yesterday he would like to be the first to address Mr. Taylor.

Mr. Renwick: I am not proud, Mr. Chairman. If anybody else wants to ask Mr. Taylor any questions, I would be glad to defer to him.

Mr. Chairman: Fine. Mr. Kolyn.

Mr. Kolyn: Mr. Taylor, I am certainly glad to see that we have resolved the board of directors problem we have had over the years, and I am certainly looking forward to seeing the gallery brought up to standards that every other gallery in this country has. My only problem with the McMichael Gallery is the uniqueness of its setting. For someone who grew up in northern Ontario as a boy, I am always cognizant of what a forest fire is. In my early days, I happened to spend a little time in a small town which had a water problem there for years, and we never solved the water problem until we finally put in a water tower tank.

On the McMichael problem, basically, as I look through all of the reading material, I see one of the concerns in the Klein and Sears report over fire safety was there was not sufficient pressure in the water system to ensure an adequate supply of water for firefighting purposes at all times. In mid-summer the pressure can be as low as 600 or 700 gallons per minute, whereas the minimum required to fight a fire adequately is 1,600 to 1,800 gallons per minute. That brings up the question of pressure.

In the recommendations, on reading page 59 of the report, I see it says: "A large reservoir of 150,000 gallons will be required for the sprinklers and as a reserve for firefighting purposes. If a deluge system is incorporated to set the cedar-shake roof, a substantially larger reservoir would be required. The cost of constructing a holding tank for such a large reservoir may be prohibitive and consideration should be given to a man-made pond to serve the deluge system only. This could substantially reduce costs, while providing a visual amenity as part of the landscape treatment. Since the deluge system is not required in the winter, problems created by the pond freezing over will not reduce the effectiveness of the deluge system."

My only problem with building a holding tank is it gives you the idea it is something like a gas tank. In 20 or 30 years you would have to replace that tank. For fire safety, you may need a lot more than 150,000 gallons. If the fire was continuous over a long period, we may find ourselves short of water. I am just wondering why any consideration was not given to building a 500,000 gallon water tank with gravity flow.

Mr. Taylor: Mr. Chairman, in response to the question, I wonder, without begging the question, if I might put that aside momentarily and then call on Mr. Sears, the architect, and also Mr. Noon and Mr. Forsyth of the architectural division of the ministry to deal specifically with this question because I am not qualified to speak to it and answer it specifically.

If I may, and it is germane to your question as background to it, I would like to respond in a much more specific way to questions that were put to me yesterday, and very understandably, by Mr. Conway, by Mr. Roy and Mr. Renwick on the question of the delay in the board's awareness and action regarding the fire hazard. Inasmuch as those questions have been put to me, Mr. Chairman, I feel I must be very frank and very factual in responding because the questions to me, as I say, are very sensible questions and much to the point.

Mr. Chairman: Are you suggesting, Mr. Taylor, that Mr. Sears answer this particular question?

Mr. Taylor: If you do not mind. With the approval of Mr. Kolyn, I would rather leave it until I have dealt with these questions which lead me into it.

Mr. Chairman: That is fine.

Mr. Taylor: I would like, first of all, to read two paragraphs from a letter I wrote to Mr. McMichael on April 11, 1978. They indicate my philosophy on the relationship of a chairman to the chief executive officer, and Mr. McMichael was indeed the chief executive officer of the McMichael collection from the time the province became involved.

10:20 a.m.

I have been chairman in a number of situations in both the private and the public sector and I don't think it is surprising that I have developed some firm convictions on the role of the chairman in situations of this kind, if he is to properly discharge his responsibility, but at the same time not to try to get into the day-to-day management. I have seen chairmen who go too far in either direction. I have tried in other situations, and here--although this one has been considerably more difficult than generally applies--to maintain a balance between the chairman not knowing what is being done, on the one hand, and involving himself in the day-to-day operation, on the other. It is a delicate balance.

Mr. Conway: Balance is a constant interest to members of this particular committee.

Mr. Taylor: If I may, I shall read from this letter, which simply relates to--and I must say it--Mr. McMichael's failure to keep me and the board informed on many situations over many years. I am not going to deal with two situations that are referred to specifically in this letter because they are not relevant to the fire situation. The fact that we were not kept informed on the fire situation is by far the most serious of the situations relating to lack of reporting by the director to the board.

This letter is to Mr. McMichael on April 11, 1978, and begins, "Dear Bob"--and I am picking out two paragraphs because the rest of the letter relates to specific situations that I don't feel are germane here unless you want to know about them--"My general philosophy on the relationship between the chairman and the executive director of the collection is something I have expressed to you many times during my tenure of office. Simply stated, I believe the chairman should not interfere in the administrative process, but if he is to discharge his obligation to his board, he in return be kept informed on all matters of significance in any phase of the operation.

"I have tried, in line with my philosophy as expressed above and because of my awareness of the creativity and the generosity you have brought to the whole undertaking, to leave you with a free rein in the conduct of the affairs of the collection within the constraints imposed by the final responsibility and authority that is vested in the board of trustees." I am taking the last portion of the last sentence. "These two matters have left me with the realization that I do not enjoy your confidence and that my presence as chairman of the board of trustees appears to serve little purpose."

I would like to move from there, Mr. Chairman, more specifically into the fire question because it was on the fact that the board was not properly informed, in my opinion, on the question of fire safety that we find the greatest reason to be concerned with the failure of the director to report to the board. I am going to refer now to memoranda and to letters, all of which can be produced if the committee wants them. It may be that you will. This can be easily handled if that is your wish. I will assume that perhaps a chronological reference to the question of fire safety in the buildings will be sufficient, but it may not be.

This information results from a search of files, within the collection, to which the board was not privy and which had not been reported to the board at any previous time. This search has taken place in recent weeks.

On March 8, 1977, there was a memorandum from Mr. R. Greenfield, deputy fire chief, the town of Vaughan, to Fire Chief Davidson of the town of Vaughan, documenting a recent visit to the collection and listing a number of fire safety violations, and a copy was sent to the collection. There was nothing further and, as I say, to the best of my knowledge and belief there was no reference, directly or indirectly, by Mr. McMichael to anybody on the board in respect of that memorandum.

A full year then transpired and on March 18, 1978, a year and five days later, there was a letter from the assistant to the director, Mr. Dennis Jones, to the deputy fire chief, Mr. Greenfield, requesting an extension of deadlines because of Mr. McMichael's absence.

On October 6, 1978, six months later, there was a letter from the deputy fire chief to Mr. McMichael after a fire inspection, noting aspects of the building contrary to drawings submitted for permit and requiring the proper approved exit facilities, stating work to be rectified within 90 days. There was still no report to the board. The letter from the deputy fire chief listed almost exactly the concerns that were expressed in his previous letter of March 8, 1977, a year and a half earlier.

On November 15, 1978, a response to the deputy fire chief from the assistant to the director stated, in general, that the McMichael Canadian Collection was looking at ways and means of correcting inadequacies. I still emphasize that to the best of my knowledge and belief there was neither verbal nor written communication to me or to any member of the board in this respect.

On April 17, 1979--we are now two years and one month past the first expression of concern from the fire chief--the fire chief of Vaughan visits the collection and tours the building with Mr. McMichael. He finds it still does not meet basic safety requirements. He states that the building is inadequate from both the point of view of fire safety and security of the collection.

If I may, I would like to revert--I should have done this at the beginning, and I am sorry. Chronologically I am going back now to 1972, which was before the board was created--almost a year before. There was a letter to Mr. McMichael from the building and zoning department of the town of Vaughan in connection with plans for an addition to the building, stating the fire department required further information to allow approval. There is no evidence of a response. The permit drawings on file with the Vaughan fire department have been reviewed by the ministry's architectural adviser, Mr. Forsyth, and none have definite approval by the local fire chief.

Then in January 1974, again prior to the references that I have made to you earlier--I think this is of interest--there was a letter from Mr. McMichael to a visitor to the collection, a Mr. J.

Douglas, who had complained of inadequate fire safety measures at the collection. Mr. McMichael assured Mr. Douglas that fire protection at the collection was excellent, and a copy was sent to the Ministry of Colleges and Universities.

I now revert to the chronological order. In April 1979 the fire chief visited the collection and stated that the building is inadequate both from the point of view of fire safety and security of the collection. Still, to my knowledge and belief, there has been no reference to the board. On May 4, 1979, there was a letter to Mr. McMichael from Mr. Greenfield, the deputy fire chief at Vaughan, listing exact fire safety improvements which must be made. All were to be completed within 60 days.

On May 29, 1979, a letter from Mr. Philippe of the Ontario fire marshal's office to Mr. Michael Noon of the ministry encloses copies of some of past correspondence between the Vaughan fire department and the McMichael collection. The letter urges establishment of solutions to the fire chief's concerns and offers services. This is the first time that the Ministry of Culture and Recreation is made aware of any of the correspondence between the McMichael collection and the Vaughan fire department.

Between May and September 1979, there were further letters from the fire department.

Mr. Roy: Could you just stop there? What date did you say was the first time the board was made aware--

Mr. Taylor: Not the board. The board was not made aware at this point. The first time that the Ministry of Culture and Recreation was made aware of any of the correspondence between the collection and the Vaughan fire department was on May 29, 1979. Mr. Roy, in all of these statements I am speaking to the best of my knowledge and belief.

Between May and September 1979 there were further letters from the fire department to Mr. McMichael, listing conditions to be corrected, including proper fire exits, and indicating legal action by issuance of a fire marshal's order. On June 14, 1979, Mr. Forsyth of the Ministry of Culture and Recreation, reviewed correspondence, noting problems identified by the fire marshal in 1977. He obtained agreement with the Ontario fire marshal's office to deal with a phased proposal to implement fire safety.

10:30 a.m.

Then, on June 28, 1979--and this is the first time that I or, to my knowledge, any member of the board was alerted to the fire situation, though, as I said to you yesterday, on many occasions there were questions from the board during meetings to Mr. McMichael, such as, "Are the buildings safe from a fire standpoint?" and the answer was always given with complete assurance--I received a letter from the Honourable Mr. Baetz, indicating the government's concern for the fire situation at the collection and stressing that the safety of the public and the staff is of utmost importance. The letter urges prompt attention by the board and asks to see steps which have been taken to satisfy the fire marshal's directive.

On July 10, which is two weeks later, there is a letter to the minister from Mr. McMichael in response to the ministry concerns on fire safety. It outlines action taken to date, stresses alterations were necessary due to recent government regulations, and says that certain items were under negotiation with the local fire chief. That was the point at which I believe Mr. McMichael--because I had received a letter from Mr. Baetz, and inquired--used the phrase that I used to you yesterday, "Well, you know that the bureaucracy is constantly thinking in terms of new needs for provision, and I am negotiating these with the fire chief."

On July 13, 1979, I wrote to Mr. Baetz, which was some 18 days after his letter to me, and said that Mr. McMichael was to report to the board on the fire safety situation at the next board meeting. On August 7, 1979, a senior liaison meeting between Mr. McMichael and the Ministry of Culture and Recreation was held and Mr. McMichael provided a report on the progress of fire safety and conservation alterations.

On August 8, 1979, there is the first appearance in the minutes of a meeting of the board of the fire situation. This was six weeks after the letter I received from Mr. Baetz. I have told you of what took place in the intervening time. I would like to read the minute to you. I am being lengthy, Mr. Chairman, and I hope I am not speaking at undue length, but it seems to me I can only thus reply to questions that were put to me very properly yesterday.

The minute is under the heading, "Town of Vaughan Fire Chief," and reads: "The director reported that administration were implementing the fire chief's requirements, namely, changing one sliding door in dining room to swing out with panic and self-closing hardware at an estimated cost of \$1,200 to \$1,300 for the door installed; kitchen range hood with extinguishing unit, approximately \$1,350; exit lights installed; emergency lighting throughout the gallery to be upgraded to code standards. This is at an estimated cost of \$7,000 to \$8,000 and is considered negotiable; pipe running down to the river is estimated at \$7,150 to \$8,000. The ministry has expressed its intention to help fund the above changes."

On August 24, 1979, the provincial fire marshal's office informs the Ministry of Culture and Recreation, through Mr. Forsyth, that the town of Vaughan will institute proceedings to close the collection as no response has been received to the letter. The Ministry of Culture and Recreation agrees to arrange a meeting with the McMichael Canadian Collection and provincial fire office to reconcile differences.

On September 7, 1979, the Vaughan fire department advises Mr. McMichael that a fire marshal's order would be issued because work was not completed within specified time, and no extension was requested. On September 14, 1979, the gallery was visited by Mr. Forsyth of the Ministry of Culture and Recreation and Mr. Tony Chow of the Ontario fire marshal's office. The notation is, "Initial deficiency is being corrected but inadequacy of fire exiting and fire separation and detection and alarm system is critical."

On September 18, 1979, there is a letter from Mr. McMichael to the deputy fire chief listing progress of work and requesting extension of time in connection with fire exits and emergency lighting. A memorandum was sent from Mr. Forsyth to Norman Best in the Ministry of Culture and Recreation recommending that funds be committed to upgrade fire safety.

On October 1, 1979, there is a letter from Mr. Best of the arts services branch of the government to Mr. McMichael urging work to proceed to comply with requests by the fire department to avoid the possibility of the fire marshal's action, stating the ministry would provide financial assistance. On October 16 there is a letter from the fire chief to Mr. McMichael, responding to his request for further extension of time and confirming work must be completed by November 16, 1979, 30 days away, to avoid legal action. On November 14, 1979, the fire chief granted Mr. McMichael another extension, until December 21, 1979, to complete the work .

The board was obviously becoming increasingly alerted during this span of a few months to the need for direct intervention in the fire question. On January 8, 1980, terms of reference were developed for the feasibility study. The board decided that the study should cover a review of gallery operations and administration as well, but it was primarily dictated by the fire situation that had come into focus in recent months.

Mr. Renwick: That is the Woods Gordon report, is it?

Mr. Taylor: No, that is the Klein and Sears report. The Woods Gordon report did not deal with the fire question. At the time the Woods Gordon report was commissioned, it was a year before we had any intimation that there was a fire problem.

Mr. Renwick: If I may just interrupt, then the Woods Gordon report did not deal in any way with alerting you to that kind of problem?

Mr. Taylor: No, it was not within their terms of reference.

Mr. Renwick: I understand that, but they usually do a very thorough job, and if there is an obvious matter, they would have drawn it to your attention.

Mr. Taylor: Their terms of reference related only to the administrative structure within the collection. It had nothing to do with the physical properties.

On May 14, 1980, there was a letter to the Honourable Mr. Baetz from J. R. Davidson, chief of the town of Vaughan fire department. It cited a recent incident where Mr. McMichael would not allow a fire truck near the gallery, which was necessary to aid a heart attack victim. Firemen were very upset at the behaviour of Mr. McMichael, and thus the fire chief registered a complaint with the ministry.

On May 22, 1980, the Klein and Sears report was received. I remember it very well because it came to my desk at about 11 o'clock on a Thursday morning, I believe it was. It outlines a potentially hazardous fire situation, serious environmental control problems and administrative changes needed at the gallery. After reviewing the report, Mr. Taylor enacts immediate fire surveillance and prevention measures. I did that within the hour because the reading of the report was such as to cause my hair, what remains of it, to stand on end.

I would if I may, Mr. Chairman, with your permission and the permission of the committee, ask Mr. John Court, who was the administrative director and had been in office for about four months at this time and who was familiar with the development of the Klein and Sears report, to speak on this fire question and on the specific telephone conversation I had with him and Mr. McMichael the day I received the report. May I do that, sir?

Mr. Chairman: Yes.

Mr. Taylor: I would just like you to recall the events of the day that I received the report and the steps that were instituted at that time. You might also, if you care to, give your recollection of Mr. McMichael's reaction to the whole situation that followed.

Mr. Court: Yes, indeed. Thank you, Mr. Chairman. The chairman mentioned that the report had been received on May 15, 1980, after some considerable months of interim measures undertaken by the staff of the gallery to provide interim fire safety measures and indeed during the progress of the Klein and Sears study itself. The report of Klein and Sears was received on May 15 simultaneously at the chairman's office in London and at the gallery office in Kleinburg, and we were quite alarmed, those of us on the staff who had received a copy of the report, as Mr. Taylor indicated he was, and we were in almost immediate telephone contact.

10:40 a.m.

Mr. Taylor asked for a number of measures to be put into place, quite properly, to see us through the short term until the more substantial structural measures could be arranged and asked Mr. McMichael and me to undertake two things: first, to develop and oversee the short-term interim bridge measures, if you like, to ensure the safety of the collection and of the people there; second, to develop a longer-term plan for phasing in the very major changes that Klein and Sears had, in consultation with the fire authorities, indicated were necessary.

While Mr. McMichael at this stage was himself very disturbed, unfortunately I guess he was not so much disturbed with the substance of the report perhaps as with the processing of it, whereby it had come simultaneously to the chairman and himself, and he had not had an opportunity to review it before it went to the chairman. I guess he was quite upset by the fact that there were substantial criticisms made of the structural measures, the operational measures that were in place, so it was a very difficult time. In any case, we did move directly to a number of bridge measures.

First, it being the middle of May, we were able to tap into some summer students who had indicated their willingness to work for the gallery, and we immediately assigned three of the summer student positions to outside night-watch surveillance duties. At the time, the gallery had an inside night watchman overnight, actually two on two shifts, and no outside surveillance. There were, of course, 100 acres of property, much of it brush and woodland and hence vulnerable to fire, so fires have been experienced on the grounds.

Through the ministry's Experience program, the Experience '80 summer student grant, we were able to provide three students of a senior nature, 18-years-olds, who would work from four in the afternoon on two shifts until seven or eight the next morning, to patrol the grounds and simply to keep an eye on the situation outside. This was the proposal and it was implemented within a couple of weeks.

In the meantime, we immediately contacted the contract security service and arranged that, until the students could be trained and in place, the Pinkerton-type service would be available and would cover the same shifts and responsibilities. This began on Saturday, May 17, at five o'clock, just a day or so after our discussion with the chairman.

The daytime gallery staff were also alerted to the danger and asked to maintain particular surveillance. This covered measures such as checking periodically outside the windows for brush fires, fires in the woods and so forth, outside the grounds, keeping an eye on the grounds through the windows for unauthorized persons in the valley and around the property, and any other unusual activity. The gallery guides, in particular, were given orders that any unusual activity should be reported immediately to the receptionist who had her own instructions for contacting the various emergency services as well as management of the gallery.

The maintenance and grounds staff were assigned to clear away some of the underbrush surplus growth which was immediately adjacent to the gallery buildings. The fire department ideally, I think, requires some 60 feet of clearance of underbrush and wooded growth from a building. Because of the particular circumstances of the gallery, they were able to agree that a lesser clearance was appropriate, again so as not to upset the aesthetic qualities of the gallery, while at the same time maintaining the safety that was required. So that again was set about immediately.

Also, commencing the same Saturday, May 17, we began a system of rotating duty managers whereby myself and the seven department heads would alternate being duty manager on site in the gallery during the weekend days and public holidays, when typically we had not previously been on site. This had been tried on an experimental basis some months previously over the Christmas holidays, and it was my feeling at the time that it ought to be continued on a regular basis back in December 1979 from our experience.

Mr. McMichael felt that was not necessary and that the compensating time off for the duty managers would then make them unavailable during the regular working week when he or I might wish

to speak with them. So the duty manager rotation had been tested and unfortunately dropped, but it was then reinstituted as one of the security measures and remained in force, I understand, until this past October.

In addition, there were a number of minor alterations to traffic flow that were implemented. There was a central stairwell in the gallery that had been kept roped off with a simple white rope drawn across the top and the bottom of the stairwell. These ropes were immediately tied back. The stairwell was labelled for emergency purposes only, but in any case it was left clear. Additional signage was placed around the property to try to discourage people from getting into the bush, because there had been a number of incidents of visitors, quite often school children, getting into the valley and starting small brush fires--fortunately they remained small--with cigarettes and firecrackers and so forth.

As a matter of fact, on April 23, 1980, just a month previously, Mr. McMichael received a letter from a secondary school in Niagara Falls apologizing for a fire that had been started in the valley by one of the students who ignited a firecracker. That fire, as in the case of all the other fires we had experienced, and there were a number of them, was able to be contained.

I think that is basically it. There were a number of equipment additions also made available to the regular staff of the gallery: 14 smoke detectors, 23 dry chemical fire extinguishers, two backpacks, which are metal containers for water for type A wood fires, two fire brooms, again for sweeping underbrush away. These pieces of equipment were tested every week, checked regularly, and the fire department was contacted and asked to provide onsite, in-service training to all staff in the use of fire extinguishers, both the dry chemical type and the backpack type. I would indeed like to commend the co-operation of Deputy Chief Greenfield and his department for their assistance and co-operation in training our staff.

The only other measure I might mention is that, as is customarily the case, one officer of the gallery was named the fire safety officer, the person who, assuming he were available, would immediately be in charge in the event of a fire emergency.

Mr. Renwick: You mean there was no such person designated until that date?

Mr. Court: Not officially, no, sir. The technical services manager of the gallery, Mr. Dennis Jones, who, as Mr. Taylor outlined, had been trying to develop and implement a number of these measures for some years past, was designated the fire safety officer. In his regular capacity he supervises the maintenance staff, housekeeping staff, security staff and so forth as well as acting as purchasing officer of the gallery. He was the logical person for it, very well trained and certainly very much inclined to approach those duties responsibly and seriously.

10:50 a.m.

Mr. Roy: Mr. Court, is it the Klein report?

Mr. Court: The Klein and Sears report, yes.

Mr. Roy: At that time, what was your relationship with the gallery?

Mr. Court: Perhaps I could clarify that, Mr. Roy.

Mr. Roy: Just briefly, I do not want--

Mr. Court: I was appointed in November 1979 as administrative director.

Mr. Conway: Appointed by whom?

Mr. Court: By the board, on the recommendation of Mr. McMichael.

Mr. Conway: And you were seconded from the ministry, were you?

Mr. Court: Yes, indeed, that was my arrangement. It was initially to be a one-year secondment and, as it turned out, it was ultimately for 19 and a half months, again, as was indicated, on Mr. McMichael's recommendation. November 1979 was just prior to establishing the terms of reference for the Klein and Sears study, but was during the time when the interim remedial fire safety alterations had been begun. As soon as I arrived, a few days after, I indicated to the technical services manager that those alterations would be the number one priority of his department, and at the first board meeting I attended we were able to recommend to the board that they consider a feasibility study to approach the structural recommendations.

Mr. Conway: What were you doing at the time of your secondment? What was your position in the ministry at the time you were seconded to the gallery?

Mr. Court: I was the ministry's program analysis co-ordinator.

Mr. Conway: Did you return to that position?

Mr. Court: No, not that position. I returned to the arts division of the ministry.

Mr. Roy: When did you cease being administrative director at the gallery?

Mr. Court: On June 11, 1981, after Michael Bell had arrived to take up his duties.

Mr. Roy: I see, and that was a decision made by the board, was it?

Mr. Court: By the board, yes, with Mr. McMichael's concurrence. By the entire board, including Mr. McMichael.

Mr. Roy: And you went back to the ministry then?

Mr. Court: Yes.

Mr. Renwick: What was the date of your appointment?

Mr. Court: November 26, 1979.

Mr. Roy: I just wanted to get some idea. I have not read the Klein and Sears report.

Mr. Taylor: Mr. Sears is here, by the way.

Mr. Roy: I have not read it, but I see the reaction. The report comes along and there is this conclusion about hazardous conditions and, knowing the number of visitors you have, including children, and for the protection of the collection and so on, steps should be taken immediately. Just briefly, what were the major deficiencies at the gallery? We have heard things about doors and exits.

Mr. Court: Yes, indeed. The major deficiency was in terms of available fire exits and the distance and the route visitors and staff would have to take in order to get out of the building in time to escape smoke and fire damage. The minor alterations, which were begun in 1979--indeed the fire department indicated those were the minimum requirements that should be done in order to keep the gallery open--were just some \$20,000 worth of alterations in terms of lighting, converting five doors from sliding doors to push doors, and that sort of thing. Those were minimum short-term requirements to forestall, if you like, the fire marshal's order.

Certainly the Klein and Sears report documents at some considerable length not only the degree of hazard that existed, and they were very forthright about that and had the concurrence in that professional opinion of the fire marshal's office and of the Vaughan fire department's office, but there were also a substantial number of really major structural deficiencies. For example, the very popular West Coast Gallery, which you are probably familiar with--the cathedral ceiling, the totem poles, west coast Indian masks--is visited sometimes on a weekday morning by hundreds of school children, as well as by hundreds of members of the public six days a week.

From a point in that particular gallery, it is some 150 feet to the nearest exit of any type on the same level, that is, three storeys up, three storeys above grade, 250 feet to the nearest exit on that level. There were closer exits if one went downstairs, but the stairwells were open, and, of course, in a fire, conceivably the smoke and the fire would be roaring up the open stairwell.

The carpeting, as well, which was throughout the gallery, was not terribly well fire-rated and, in the professional opinion of the fire authorities, constituted a distinct hazard from smoke. The carpeting would generate a lot of smoke. So that again reduced the possibility of exiting through the open stairwells. One could conceivably in an emergency be that great distance away from the nearest exit on the third level and in the midst of hundreds of other visitors, also, of course, anxious to get out at the same time.

The exit on that level, as it happens, is the original front door of the McMichaels' home and it is double-locked with a bolt lock operated by a key. It did not have a panic button or a push button, so it was necessary for the gallery guide, stationed adjacent to that floor, to be aware of where the key was located so that in an emergency she could get hold of the key to unlock the door.

Mr. Chairman: Mr. Kennedy, I believe you had a question.

Mr. Kennedy: Yes. I just wanted to ask you a question about the outside fires, Mr. Court. You mentioned fires outside have been experienced. I was wondering if any, and how many, of those placed the building in jeopardy. Was the fire department ever called to respond?

Mr. Court: The fire department, Mr. Kennedy, was called on virtually every occasion during my term of service with the gallery, even if it appeared to be a minor fire, simply as a preventive and precautionary measure. I would estimate there were perhaps four to six fires per year, typically during the dry season or drier season of April through October, outside on the grounds, either lightning fires--in one or two instances lightning striking trees--or brush fires caused by perhaps careless smoking, the incident involving a firecracker, and so forth.

Mr. Kennedy: Was this number during your period of tenure there, or did you understand these had been taking place since, say, 1965?

Mr. Court: Certainly during my term of service, my own direct experience was that was the degree of frequency of fire or fire-related incidents. There were also occasional fire incidents inside the building as when a fuse would blow--a fusetron, actually--and create a good deal of smoke and possibly some initial flaming. Prior to that, my understanding is that there had been similar fires with perhaps the same degree of frequency.

Mr. Roy: Mr. Court, have you reviewed the correspondence that has been referred to this morning by Mr. Taylor, correspondence starting as far back as at least March 1977, about discussions with the fire people from the township? Have you reviewed it?

Mr. Court: Yes, indeed.

Mr. Roy: In that correspondence was there mention by the people in charge of fire safety from the municipality about some of the concerns mentioned in the Klein and Sears report, the exits, the carpeting and that sort of thing? Were some of these things mentioned in that?

Mr. Court: I think there was. The chairman referred to discussions between Mr. Brian Forsyth of the ministry and Deputy Chief Greenfield, in which they approached the remedying of the fire safety situation on a phased basis and, indeed, agreed that there were those measures which could be done and undertaken and

should be undertaken in the short term, and then other more substantial measures which would require a phased approach, a longer-term more concerted effort. One of the intents of the Klein and Sears study was to identify those.

11 a.m.

Mr. Roy: Your major concern, or at least the major concern I gather from the people involved in fire safety, was the exits. I take it this was one of the major problems.

Mr. Court: I am a little outside my professional ground there. Mr. Sears, or one of my colleagues of our protectional experience in the ministry, can certainly confirm that. That is my own understanding of the situation.

Mr. Roy: I don't want to get into the technical thing. All I want to know is was the issue of exits one of the concerns mentioned by the deputy chief or the fire chief from the township as early as March 1977?

Mr. Taylor: May I attempt to answer, Mr. Roy? I would like to ask Mr. Brian Forsyth of the architectural division of the ministry, to whom I have referred on a number of these exchanges, to answer. He is here. I think it would be much easier for him to answer those questions because Mr. Court would be answering them by hearsay whereas Mr. Forsyth can answer them directly. Would you mind that?

Mr. Chairman: I wonder whether Mr. Roy would want to proceed with the questioning because Mr. Renwick has been waiting from the onset to question Mr. Taylor on this.

Mr. Roy: There are a lot of people here who can answer questions. When were the concerns about the exits first raised, either by fire chief or deputy chief? That is all I want to ask.

Mr. Taylor: If I may, I would like to ask Mr. Michael Noon and Mr. Brian Forsyth to answer these questions directly, with the approval of the chairman. These gentlemen are here.

Mr. Chairman: We went a little off tangent. I wonder if Mr. Renwick would like to question Mr. Taylor now.

Mr. Renwick: Mr. Chairman, I specifically wanted Mr. Taylor here, not exactly just to address questions to him, but on a number of concerns in a number of areas. I do not want to interrupt this discussion with respect to the fire part of it and that is what I want to deal with.

Mr. Chairman: Would you mind, Mr. Renwick, if we ask Mr. Forsyth then to answer Mr. Roy's question?

Mr. Renwick: I want to ask Mr. Taylor a question that is bothering me and maybe the others can fill in on the problem. I take it that the Klein-Sears report--Mr. Sears is here and will be able to tell us--disclosed an extremely dangerous situation that

prompted you to take immediate action. Yet what I can't understand is between the time that the board took over--at least from that time--until the Klein-Sears report and your prompt action at that time, was there not in the nature of that building and the numbers of people who were going through it, and the distance, all of the things which Mr. Court has referred to--did it take Klein and Sears to focus attention on that hazard? Would not that hazard have been something that was visible to an alert board of trustees?

Mr. Taylor: I answer that simply by saying we were assured time and again by Mr. McMichael that the buildings had been built to comply with fire regulations.

Mr. Renwick: I understand that. But your board met on the site.

Mr. Taylor: Yes, we did.

Mr. Renwick: Regularly. You knew there were tremendous numbers of people going through. You knew the type of construction of the building because it was visible. It seems incongruous to me that one can try to pin the blame on Mr. McMichael with respect to the inadequacy of the fire precautions to be taken simply on the basis that he didn't disclose to the board his ongoing controversy with the fire chief of Vaughan township. It seems to me to be quite unbelievable that a board would have so conceived of its mandate that its members could go almost blindfolded to their board meetings and now make it an issue of whether or not Mr. McMichael did or did not disclose to the board the continuing correspondence with the fire chief.

Mr. Taylor: Mr. Renwick, I think there were two distinctions between Mr. McMichael's position and the position of the seven independent trustees. The first was that Mr. McMichael had supervised the construction. I believe, and I can be corrected on this, that much of it or part of it was done without a general contractor. He had supervised the entire construction. At the time the board was appointed and took over in April 1973, all the buildings and the galleries were in place. So Mr. McMichael was much more conversant with the extent, if any, to which fire regulations had not been complied with than was the board. He gave the board assurance that all fire requirements had been complied with, and I am repeating myself.

Mr. Renwick: Is that recorded anywhere?

Mr. Taylor: Is what recorded?

Mr. Renwick: That Mr. McMichael gave you assurances that all the fire standards had been complied with.

Mr. Taylor: Yes. I have just been reminded of the letter, to which I referred, written by Mr. McMichael to a Mr. Douglas in January 1974, a letter to a visitor who had complained of inadequate safety measures at the collection. Mr. McMichael assured Mr. Douglas that fire protection at the collection was excellent.

Mr. Renwick: Who is Mr. Douglas?

Mr. Taylor: I do not know who Mr. Douglas is. I can produce the letter. He was a visitor to the gallery.

Mr. Renwick: I still cannot get away from the fact that your board as such met on the site. It is just a puzzle to me that somebody on the board did not say, "My God, there are a lot of people going through here. There are a lot of kids going through here. The nature of these buildings is such that somebody is going to get hurt if there is a fire."

Mr. Taylor: I think this was said on several occasions.

Mr. Renwick: By members of your board?

Mr. Taylor: By members of the board. Mr. McMichael, in each instance, gave a complete reassurance that these buildings had been built with fire safety standards in mind and the subject was not pursued.

Mr. Renwick: I do not think we can solve it. I cannot solve it to my satisfaction in this committee. It will always be a source of wonder to me that your board gave such total delegation to Mr. McMichael, on the one hand, of all the authority and took his word about everything up to a certain point in time, and then you began to question whether he had any authority to exercise because you had the authority. That conundrum is unbelievable to me.

Mr. Taylor: May I say this: I think the record is clear, whether in the matter of fire safety or our attempts--and there were several of them, the first three aborted--to bring an assistant director or an administrative director into place. I think the records are clear that from April 1973 through October 1980, which is a period of seven and a half years, the board was moving increasingly away from recognizing that Mr. McMichael had created this and was an authority unto himself. We were moving more and more to the point of saying, "There has to be professional direction in this institution." I think the records in respect to any phase of the operation will bear that statement out.

Mr. Conway: Apart from Mr. Renwick's point about the board, what I find even more troubling is that from 1972 on, and just by recalling what you said about that detailed chronology that you began with, there were all these ministry people running around the place who had expertise and responsibilities. I know how diligent some of these ministry people are and how exacting they can be. What I do not understand is, where were they?

I am prepared to share a bit of the incredulity Mr. Renwick has expressed vis-a-vis the board, but what I cannot seem to get straight in my mind is, what about the Forsyths and these other people who have expertise and who know about the ministry's concern about fire matters? Why weren't they saying by 1978 or 1979, "Listen, we have a problem here and we may have another problem in terms of our relationship with our director."?

There is a real worry here, and that is the part I do not understand. Certainly when the Klein and Sears report is available, by gosh, they are really in action. We heard from Mr. Court and we

have heard from Mr. Noon and we have yet to hear from Mr. Forsyth, but one gets the distinct impression that by God, they were ready to act then. Were they too oblivious to all of this with their special expertise and apparently from time to time personal visitation of the gallery?

11:10 a.m.

Mr. Chairman: Mr. Taylor, would you like Mr. Forsyth to appear now?

Mr. Taylor: Yes, I would, but I would like to, if I may, respond to Mr. Conway. I am sorry to have to say this, but I think it is at least equally incredible that Mr. McMichael, even after the production of the Klein and Sears report, apparently failed to see the fire situation. This simply shows the strength of his conviction when time and again he said to us, "Look, these buildings have all been constructed according to fire standards, and you have no concern on this regard at all." I would be very happy to call any number of trustees--

Mr. Renwick: Mr. McMichael has no monopoly on myopic views. (Inaudible) day in and day out to see what should be done is perfectly obvious to us. I just want to finish that off. I have fixations about certain things that nobody can talk to me about; everybody does; even Mr. Roy does from time to time.

Mr. Kolyn: Mr. Renwick, may I just suggest a point.

Mr. Renwick: I just want to complete that. If there is a blind spot in somebody, you do not blame him for everything that happens. If, as Mr. Conway says, other people were around, you were around, your board was around, you had responsibilities to discharge.

Mr. Taylor: Mr. Renwick, that is why I read the extracts from my letter of 1978 to Mr. McMichael, which it seems to me recited the philosophy to which I am committed in the relationship of a chairman to the chief executive officer. He had the responsibility for all phases of the operation of the collection and indeed far more so in his case than in the ordinary case of a chief executive officer. This was because he had started it from nothing and it had been built up under his direction in every respect.

I would simply say this, sir, and I think it is fair, I would doubt if there is a person in this room who has not sat in meetings of one kind or another and failed to say: "I wonder if this building is safe? I wonder if before we conduct this meeting if we shouldn't make sure it is. We have the public wandering around and we had better have an inspection made." Hindsight is 20-20 vision.

Mr. Kolyn: May I interject? I would just like to mention that under the Fire Marshals Act they are continually changing what the egresses are. For example, in the modern buildings when you leave a room or you are leaving a building, the door must go out. Here we have a door coming in. I am not sure under the new regulations whether that is entirely legal now.

Mr. Conway: This old barn wouldn't meet any of the--

Mr. Kolyn: I say to you right now that there are a lot of other doors in this place that should be swinging out that do not. Under the new regulations, that is the way they are supposed to swing. Really how would we know? The fire marshals would be the ones to know what the updated act says, not the average individual.

Mr. Renwick: Then surely what you are saying is let he who is without sin cast the first stone.

Mr. Kolyn: No. All I am saying to you is that things do change.

Mr. Chairman: We are not discussing the fire safety of Queen's Park. Let us get back to--

Mr. Conway: We will talk about that a little later.

Mr. Chairman: Mr. Forsyth's name had been mentioned time and time again. Could we ask Mr. Forsyth and perhaps Mr. Noon to join us.

Mr. Taylor: Mr. Chairman, while they are coming in, I would like to say this: I said to you yesterday in my opening remarks that my role as chairman must, if I am worth my salt at all as a chairman, be a role of objectivity. It is going to be my task in the months ahead to meld this board, to bring Mr. and Mrs. McMichael and the other seven members of the board to a common point of view and an understanding of what we are doing and to heal the breach that has taken place. I am very sorry I have had to respond as I did this morning, but I felt I had no choice but to respond in this way. I realize this brings personality conflicts into the picture. This is the role I must perform to try to avoid those and to encourage all members on our board to avoid them.

Mr. Conway: Mr. Taylor, I just want to say in response to that, I very much appreciate your concern, and I think you have handled a difficult matter very, very well and sensitively. But in your letter of April 7, 1978, you expressed very straightforward concern to Robert McMichael about the difficult position you were in. That is four years after your, "Well, be patient, Bob," conversation with the Premier, at which point you said, "There are problems here that are going to make this relationship difficult."

Mr. Taylor: Mr. Conway, that is another phase of the operation, but I can very easily document what happened in 1975 when we first appointed an assistant director. We had an excellent man, but unfortunately he found that the situation was impossible to live with and he left. Then in 1976 we appointed still another person, and after three months that did not work out. Then we appointed somebody from staff, and Mr. McMichael did not even carry out the board minute in that respect and give the person the authority that the board had given to him. It took us many months to find out that the person was not even in place. I just do not want you to think that we were sitting and doing absolutely nothing as a voluntary board.

Mr. Chairman: I would like to remind members that we have a sense of respect and responsibility for other witnesses who have made a sacrifice to be here for the second day, and they are expecting to be before the committee. Just keep that in mind. It is 11:15, and I am sure Mr. Newlands is expecting to address the committee before the 12:30 recess.

Mr. Roy: My question is very simple. I do not want to delay anyone here, but I would simply like to know this: The great concern apparently in the Klein and Sears report was the question of exits in that gallery. I want to know whether this concern about the exits was raised by the Vaughan township chief as early as 1977-78. Can someone answer that?

Mr. Noon: Maybe I can start and perhaps, if necessary, hand it over to Brian. I think you have to appreciate that there was a series of issues raised. The first ones were raised by the Town of Vaughan Fire Department, and these were in connection with details of the building, such as the opening of doors, the way they were swinging, security systems, the fire access route, the supply of water, et cetera. These were fairly detailed issues which they required to be corrected in order to at least bring the building up to some safety standards. They were not the major issues that were later identified in the Klein and Sears report as articulating the concerns of the Ontario fire marshal.

Perhaps I can just go back to an earlier question, "Where was the ministry in all of this?" The ministry was brought into this by the Ontario fire marshal in May 1979 and immediately started discussions with Mr. McMichael, who was the director of the gallery and the designated liaison between the gallery and the ministry and trying to effect some of the changes and to deal with the concerns both of the Town of Vaughan Fire Department and then, later, the Ontario fire marshal, because they had been brought in by the Town of Vaughan Fire Department.

The Klein and Sears report that was commissioned subsequently picked up on the concerns both of the Town of Vaughan Fire Department and of the Ontario fire marshal, and it became a larger issue of the relationship of the exits, the whole access for firefighting equipment and sprinklering. These were probably newer issues than the issues identified by the Town of Vaughan Fire Department.

Mr. Roy: Somebody at the table please help me. I have the impression from the chronology that is given to us here that the concerns raised by the Vaughan township deputy chief or chief did not seem to be nearly as serious as the matters raised in the Klein and Sears report.

Mr. Noon: I think you have to accept that they were all serious. The issues raised by the Town of Vaughan Fire Department were just as serious, but they were more minor details in terms of correcting the building deficiencies. The review done by the Ontario fire marshal, which was then relayed in the Klein and Sears report, certainly looked at the building in a much more global perspective as far as relationship--

Mr. Roy: You have heard some of the comments made by my colleagues. Mr. Taylor has given us all the chronology and, in spite of all this chronology and the assurances made apparently by Mr. McMichael to the board and Mr. Taylor, the first mention of concern about the fire problem is mentioned in the minutes sometime in 1979, apparently after the ministry got involved. That appears to be the first mention and we find that surprising.

The second point that I find very surprising--and Mr. Renwick has mentioned that Mr. McMichael was not reacting--is that I would have thought if the fire problem was that serious the fire chief down there, after trying to negotiate for some two years with this quite serious problem, apparently did not advise the ministry until some two years after he raised the original concern.

Mr. Noon: He advised the Ontario fire marshal who advised the ministry.

Mr. Roy: Yes. If the problem was that serious, do you not find it surprising that the people who were raising this concern would tolerate the situation in the face of inaction, apparently, by Mr. McMichael for a period of two years?

Mr. Noon: But I understand, and we have heard some quotes from correspondence, that the fire chief was continually being advised by Mr. McMichael that these deficiencies were being attended to.

Mr. Roy: But they were not.

Mr. Noon: Quite true, they were not.

Mr. Roy: And he was given warnings in 1968 and nothing was happening apparently.

Mr. Noon: In the early stages, obviously, no. I find it strange, too, that nothing was happening and that his requirements were not being complied with, nor was the ministry nor the board being advised that there was a problem.

Mr. Roy: I am led to one conclusion in this process. Either the concerns were not all that serious, or if they were very serious, the township would not have tolerated inaction for two years.

Mr. Noon: The concerns were serious because they were resulting in threats of closure of the building.

Mr. Roy: If they were serious, then I find it surprising that the fire marshal and the ministry would not be advised by the chief who is raising these concerns for a period of two years. I am surprised he would have tolerated this situation in the face of inaction, apparently, by Mr. McMichael for a period of two years.

Mr. Noon: I think that surprise should also be addressed to the Town of Vaughan Fire Department.

Mr. Roy: Mr. Chairman, I just wanted some explanation of that.

Mr. Noon: All I can say is that the ministry took action when it was advised of the problems and it was advised of the problems by the Ontario fire marshal after the Town of Vaughan Fire Department, which is the local authority in this connection, in frustration turned to the Ontario fire marshal for some assistance in this regard.

Mr. Roy: And that was over two years after the original concerns that were raised, according to the information given this morning--that was March 1977, the original concerns--and we are looking back now to May 1979 when finally the ministry was advised.

Mr. Noon: Yes, that is right.

Mr. Roy: You are saying, Mr. Taylor, that during all of that time the board was never advised by the fire chief down there?

Mr. Taylor: To the best of my knowledge and belief, it was not, according to the correspondence of Mr. McMichael, the director.

Mr. Roy: I find that hard to understand.

Mr. Taylor: Mr. Chairman, if I may, I would like to ask Mr. Forsyth, because his name has been referred to in a number of these, if he has comments he would like to add.

Mr. Roy: I do not have further questions. If Mr. Forsyth is going to speak, I would just like to know who you are and what your credentials are.

Mr. Forsyth: I am the senior architectural adviser in the grants administration branch in the Ministry of Culture and Recreation.

Mr. Roy: Are you an architect?

Mr. Forsyth: Yes, I am a practising architect. There was an earlier question about exiting, whether this was brought up in the earlier correspondence. I would just like to point out that in the 1977, 1978 and 1979 correspondence there is mention of entrance doors opening inappropriately, exits throughout the building, and that sort of thing.

Mr. Conway: Mr. Forsyth, how long have you been with the ministry?

Mr. Forsyth: Since 1978.

Mr. Conway: Would it be normal for you to have much--how often would you be out at that gallery, if at all?

Mr. Forsyth: The only time I would go to the gallery is if there was a request for something of a capital nature. The earliest visit I made was late in 1978 regarding reglazing of the windows and relamping of the gallery. At approximately that same time, we were looking at some minor changes to the building in the area of fire.

Mr. Chairman: I wonder, Mr. Conway, if we could let Mr. Forsyth make his statement and then pursue him with questions.

Mr. Forsyth: I believe one of the points which has been discussed is the issue of the interim report prepared by Klein and Sears and issued on May 15, 1980. That was sent directly to the chairman of the board and within approximately a week after that Mr. McMichael received a copy of that report. At that time, around May 22, 1980, Mr. McMichael called me and expressed concern that the consultants had greatly exceeded their terms of reference in the area of fire protection and building standards. These issues were both among the original terms of reference of the study and, in fact, the study requested that the consultants review fire safety with the appropriate authorities.

Mr. McMichael, at that point, asked me for advice on how to terminate the study and how to prepare a response to these allegations. He felt that the consultants were creating alarm among the board members.

Mr. Roy: In some ways I can understand that. If for two years apparently there is a serious problem and, according to the evidence we have heard, he keeps saying, "Oh, ye, sure, we are correcting that," and nothing happens and no other steps are taken, then you have got to come to the conclusion that either it is not as serious a problem or somebody is being wilfully blind.

Mr. Conway: If that is your statement, Mr. Forsyth, I want to come back to it. That Klein and Sears report is tabled about 18 months after you go to the ministry. Do I take it then that at no time either during your personal visitation or in your mandate of responsibilities at the ministry did you pick up anything that worried you? I think, for example, of an architect going out either to do business at the gallery or to just go and enjoy the gallery. On either account if you were there with any degree of frequency, and if these problems are as they are purported to us, a ticking time bomb, would they not be red flags to architects?

Mr. Noon: Maybe I can answer in part for Brian to relate to the function of the architectural adviser of the ministry. He is within the grants administration branch and deals with capital projects. The ministry has an investment and an involvement of many thousands in capital project buildings, many of which are funded through Wintario. In terms of architectural functioning, it is always in connection with a request for capital funds that we involve ourselves in any architectural review. We are not there as policemen or inspectors and there are the local codes.

Mr. Conway: All right. I appreciate that, Mr. Noon, but just put yourself in our position. We are told, we are asked to believe, that there really is a very worrisome array of serious fire problems that tie into a very popular, major public institution that falls within the ambit of your departmental responsibility. You two guys are architects who have some kind of a relationship. I just asked Mr. Forsyth--I am not in any way depreciating your intervention. But accepting what we have been told about how serious these problems are, this bombshell arrives

in May 1980 and seriously concerns the board chairman, who immediately undertakes corrective measures. I am asked to believe that in your capacity as an architect on visits, which would have an indirect association with some of these matters, this didn't register itself at some point in that 18-month period.

11:30 a.m.

Mr. Forsyth: The visible problems, the ones that were evident, were the problems we were dealing with through 1978 and 1979 in response to the fire marshal's list. The more serious problems that have surfaced are of a very technical nature and required review of the building construction--things like the wiring, looking at the overall alarm system for the building. They are not the sorts of things like whether a door swings in or out which, yes, you do pick up on a simple visit through the building.

Mr. Conway: Again, it is a quantum leap--if we were believe that--to go from those kinds of things to something that arises some day in May 1980. My question has to be to your superior, to the minister or to the deputy minister. The question that comes to my mind is, is there a branch of the ministry, is there a unit in your department that has as its responsibility the continuing inspection of these institutions under your departmental umbrella?

Mr. Cornell: No, there is not. As you know, there are thousands of arenas built around the province and so on. In everything we are involved with in the capital projects area, the people there are involved with the local authorities and the local rules and regulations.

Mr. Conway: All right, I appreciate that. Back to Mr. Forsyth. There was nothing in your association on behalf of the ministry with the gallery prior to May 1980 that would have allowed you to anticipate the gravity and extent of the problems reported in the Klein and Sears report?

Mr. Forsyth: Not the extent, no, sir.

Mr. Conway: The gravity?

Mr. Forsyth: No, because that comes with knowing the full extent.

Mr. Conway: That is almost a Thomistic answer. I appreciate it, none the less.

Mr. Renwick: Mr. Chairman, I would like to refer if I can to three or four areas that are of concern to me. I would appreciate anyone who can do so answering the questions for me.

My first question is to Mr Taylor. Do you have, and when did you develop, any policies for the McMichael collection with respect to acquisitions and dispositions?

Mr. Taylor: I think we started to develop them in the second meeting in 1973.

Mr. Renwick: Are they written? Can we see those policies?

Mr. Taylor: Yes. We have transcriptions of them.

Mr. Renwick: Could you give me some idea of what the policies now provide?

Mr. Taylor: In the area of acquisitions and deacquisitions, would that be the question?

Mr. Renwick: Yes.

Mr. Taylor: What we did in 1973 was to agree on a limit up to which Mr. McMichael had authority to deal on behalf of the collection because we had confidence in his knowledge of works of art. So there was a limit on what he could buy, and a much smaller limit on what he could sell, without a full approval by the board because it gave him authority to deal on the spot when an opportunity presented itself.

I think the first of those--and of course I will be happy to provide the documentation on this--was in 1973. On at least two occasions since then, we have increased those limits in line with the inflationary factor.

Mr. Renwick: Staying with the question of limits, what was the substance of the policy?

Mr. Taylor: Giving him authority to acquire for the collection, within the broad parameters of the type of acquisitions that the board approved of, to acquire something he saw. I don't know if I am answering the question or not.

Mr. Renwick: I suppose I will have to wait until I see the written policy. Is it a developed policy? Does it relate to conflicts of interest? Does it relate to disclosure questions? Does it relate to responsibilities to the board?

Mr. Taylor: No, I don't think it relates to disclosure questions--

Mr. Renwick: This is keeping Mr. Bell so busy--

Mr. Taylor: I know.

Mr. Chairman: Mr. Bell, would you mind answering maybe or assisting Mr. Taylor, if Mr. Taylor does not mind?

Mr. Taylor: That is what happens when you get a doddering old chairman. May I ask Mr. Bell, rather than breathing past my shoulder, if he will answer one or two of these questions. He can do it much better than I can, if Mr. Renwick doesn't mind.

Mr. Renwick: I would like to know whether or not, with your experience, Mr. Bell, when you took over as director, you found in place an up-to-date, modern policy with respect to acquisitions--and this dreadful term "deacquisitions"--conflicts of interest, responsibilities, disclosures and valuations?

Mr. Bell: I think the fairest way to answer this is that over the years there was a development of a statement of policy as to the content of the collection. I think we can document that from the 1965 agreement, where it is precisely indicated, right through to certain materials that were prepared, upon the board's request, by Mr. McMichael as late as 1978, if I recall. They deal primarily with content.

The other materials that I have been able to find in relation to this particular question relate to some bylaws that set up a sales and acquisitions committee of the board, setting up certain financial limitations within which Mr. McMichael was able to operate, either for the sale or deacquisition of works to or from the collection.

Mr. Renwick: Leaving aside Mr. McMichael's ambit of authority entirely, with your professional skills and abilities will you be recommending, or have you recommended, changes to the board with respect to those policies?

Mr. Bell: I have not made any specific recommendation about those policies.

Mr. Renwick: Will you be doing so?

Mr. Bell: I will be. I think I would like to say that at the September 1 board meeting the board approved the Canadian Art Museums Directors' Organization statement of practice and ethics to govern the activities of the collection from that point on. If you have seen that in the back of the Klein and Sears report, you will see that it deals with matters of conflict of interest and the relative sensitivities of trustees being involved in giving works to the collection.

Mr. Renwick: And employees?

Mr. Bell: And employees.

Mr. Renwick: Has that been formally adopted by the board now?

Mr. Bell: That was formally adopted by the board September 1--

Mr. Renwick: Do you consider it adequate?

Mr. Bell: Quite frankly, I consider it only as a simple guideline. I tend to believe that the position taken by the American Association of Museums in 1978 in their publication is probably the wisest and most sensible course, and that is that each institution develop a statement of guidelines and practice for the behaviour of the institutions' trustees and staff, reflecting the special considerations that each institution has.

Mr. Renwick: Are you aware, Mr. Bell, that the act which governs the collection specifically and categorically states: "The corporation is for all purposes an agent of Her Majesty, and its powers may be exercised only as an agent of Her Majesty."?

Mr. Bell: Yes, I understand that. I am not absolutely certain what it means.

Mr. Renwick: Could I go on and refer to a further subsection of that clause? "All real and personal property acquired by the corporation is the property of Her Majesty, and title thereto and ownership thereof may be vested in the name of Her Majesty or in the name of the corporation." I understand that, and I am just a legislator. Would you therefore agree that if I am an agent and--

Mr. Bell: You explain the legislation to me, and I will try to explain what we do.

Mr. Renwick: Perhaps I should ask you what is unclear about the statement: "The corporation is for all purposes an agent of Her Majesty, and its powers may be exercised only as an agent of Her Majesty." I think that says that the corporation is the agent of Her Majesty.

Ms. Fish: It is not anybody else.

Mr. Bell: I understand that it is not anybody else, yes.

Mr. Renwick: And nobody else. Everything they do is as agent for Her Majesty.

Mr. Bell: Yes.

Mr. Renwick: So it is a public trust.

Mr. Bell: Absolutely.

Mr. Renwick: Right from the very beginning.

Mr. Bell: In this particular case even more so than a lot of other museums and galleries in the country.

Mr. Renwick: When you took over there was no code of ethics. Is that a fair statement?

Mr. Bell: I have not been able to find anything, in the records of the collection that I have access to, indicating that there was such a thing.

Ms. Fish: Could I ask a supplementary just to clarify that answer? You indicated that you had not been able to find anything in records you have access to. In your current capacity are there indeed records of the collection to which you do not have access? It was just an interesting qualification in your reply. I am wondering if you could explain whether that was a significant qualification.

Mr. Bell: It is a significant qualification in two ways. I do know there are records under the control of the founder director-emeritus that have not been turned over to me in order to carry out my responsibilities. I suppose the other significant qualification is that the records of the collection are probably haphazard.

Mr. Conway: How do you know that you do not have records that you ought to have to discharge your functions as director?

Mr. Bell: Periodically files have come forward to me that relate directly to the responsibilities I have. They have come forward subsequent to my request of July 31 for those files related to carrying out my responsibilities.

Mr. Conway: They have come from where?

Mr. Bell: They have come from Mr. McMichael.

Mr. Renwick: Mr. Bell, I realize I am speaking about the future because my concern is that we cannot redo the past.

Mr. Bell: Absolutely, yes.

Mr. Renwick: I hope this kind of situation will never be before this assembly in this form again. Can you give me some assurances about the kinds of things you are going to set about doing that will give us a sense of confidence in the management of the collection? I must say I have great respect for Mr. Taylor and the situation in which he found himself, but I have very serious reservations about the management of that collection. I agree with Mr. Taylor that it is hindsight, and my knowledge is limited to these documents. Have you formulated, in your own mind, the kinds of steps you are going to take that will assure this assembly that the public trust inherent in this connection is going to be scrupulously managed?

Mr. Bell: Yes, I have, as a matter of fact. One of the first things I did when I got to the place was to find out whether there was such a thing as a copy of the manual of administration for the government of Ontario that provides certain guidelines as to behaviour of staff of government crown agencies, et cetera, and it is my intention to use those guidelines.

Mr. Renwick: I take it you did not find one there.

Mr. Bell: It was hidden away, I have to admit. I had to look hard for it. That is a very administrative, bureaucratic consideration.

Mr. Renwick: I understand.

Mr. Bell: I do intend--indeed, we have started working on this. The first step was the adoption of the CAMDO code of ethics, really, as an interim measure and as an educative thing for the staff and for the trustees as well, to develop the kinds of considerations that would be appropriate to that particular institution. I think you mentioned the agent in right of Her Majest. What that does, to me, is make it very much more apparent that we have to be so much more circumspect in how we go about things and ensure that, indeed, we have dotted all the i's and crossed the t's and have made sure there is no opportunity for an attack upon the institution. That is really an erosion of the public confidence in that kind of institution, and, in so far as it is associated with the Legislature, also an erosion upon all those kinds of values we hold strongly to.

There are matters of personnel policies that have to be dealt with which are in the process of being hammered out. There is the matter of the acquisitions policy you referred to that we are going to have to develop in the context of whatever comes out of the amending legislation here to ensure that what we are doing is going to fall within the confines of the law of the province and, indeed, the law that governs our activities.

Mr. Renwick: Would you mind if I gave you my version--since everyone seems to believe no two or three lawyers can ever agree on anything--of the present status of the 1965 agreement? I would be anxious because I would urge you to take the best legal opinion you can find. It may be on your right hand; it may be anywhere else.

Mr. Bell: We have a lot of legal help.

Mr. Renwick: I think you have to select with very great care, and I say this as well to Mr. Taylor, counsel who will specifically address the question of the status of the 1965 agreement. It has been stated categorically here, and I think this is fair to Mr. Taylor, that he considered it was none of his business. It did not bear any relationship to his responsibilities for the McMichael Canadian Collection, and when he took over it was a dead letter. We have the two ministers of the crown saying that is not so, and there is no point in rehashing the old history. The statements are on the record.

What has bothered me for a long time is the very fact that that corporation is agent for Her Majesty and Her Majesty is party to the agreement of 1965. I don't think one has to be a lawyer to understand that, as agent for Her Majesty, the agent cannot alter the terms and conditions of this agreement. Whatever the corporation's role may be, this agreement still exists between the crown and Mr. and Mrs. McMichael.

11:50 a.m.

I don't want to go into a long history, but it specifically said, and this is what led me back in 1972 to raise the issue, that, notwithstanding any of the foregoing provisions of this agreement, that is section 30 in the last paragraph: "In the event the province of Ontario establishes a foundation for any of the general purposes of preserving, maintaining or developing lands, buildings and collections of art for the public benefit, the crown may assign the whole of the lands, premises and collections vested in or subsequently acquired by it, pursuant to this agreement, including all its rights, powers and privileges and subject to all its obligations in connection therewith to the said foundation, provided the crown agrees not to make such assignment until the said foundation covenants to be bound by the provisions of this agreement to the same extent as is the crown herein."

I don't pretend to understand the implications of that with respect to its relationship with the 1972 statute. That was what prompted me in 1972, to the best of my recollection, to ask that the bill be amended at that time to make this agreement an appendix to this statute so that the corporation would be aware that this

was a solemn agreement. I say this particularly to Mr. Kennedy. This is an agreement and the question now is, does it exist or doesn't it exist? In the delightful haze that the minister wants to perpetuate and that nobody wants to come to grips with and we in the rigid structuralism of this committee will not be coming to grips with because the--

Mr. Chairman: If I may, Mr. Renwick--

Mr. Renwick: No, Mr. Chairman, you may not, at the moment.

The specific clauses of this deal with a number of minutiae. It doesn't deal with the substance of that. What I want to try to ask you to do and to ask Mr. Taylor to do is, once and for all, to take the best advice you can get as to the extent and degree to which this agreement exists. I happen to believe it exists in total.

How then is the corporation, as agent for Her Majesty, affected by the statute which was passed, and to what extent does the statute abrogate or affect in any way or simply repeat some of the obligations in this? You should do that in the light of the agreement of--what is the date?--October 1980 with respect to Mr. McMichael's new role and your role, sir, and Mr. Bell's role, and then again in relation to the agreement which, however it came about--and I have real problems with how it came about, but again that is not going to be our problem--of February 1, which is not yet in formal form, even though it is signed by Mr. Solway on behalf of the board--

Mr. Bell: No, it is signed by both parties.

Mr. Renwick: Oh, it is now, is it? We just have the one that was distributed yesterday.

Mr. Bell: It is on the back page.

Mr. Solway: I think you will find the signatures are there.

Mr. Renwick: Oh, I didn't know the signatures of the board were there.

I am coming back to what I was trying to say yesterday. We are going to come out of this with a very untidy bill. It is not going to answer those questions. I am saying to the chairman, and I am saying to you, sir, that I think it is important from our point of view as legislators that those questions be addressed and it be straightened out, once and for all, as to how this agreement and how the statute work and what exactly is the status of the corporation. I think that would be a first step towards the rationalization of the confusion that surrounded this agreement originally and was inherent from the very beginning in the incipient conflict that ultimately exploded between the chairman and Mr. McMichael. I mean exploded not in personal terms, but in terms of the collection.

If I may complete my minor lecture, the second thing I would like you to do is attach to your annual report next year the then policies of the board with respect to acquisitions, de-acquisitions, ethics, conflicts of interest, responsibilities, duties and obligations. I hope out of this we will get a model institution of a public trust with the trustees fully cognizant of their obligations and of their duties. That is the lecture part of it. If you care to comment, I would appreciate it, but I am not asking you to comment on it.

Mr. Bell: In One single sentence, my intent when I came to this particular institution was to do exactly as you suggested, to make it a model institution in fulfilling its public trust.

Mr. Renwick: Mr. Chairman, may I ask Mr. Court a couple of questions?

Mr. Chairman: Mr. Renwick, because you made reference to the rigid nature of the committee in terms of our understanding the very important question you raised yesterday at the conclusion of our meeting--and I certainly was not prepared to answer some of these questions--perhaps the legislative counsel to this committee can answer it. That clarity of explanation is very important to our understanding of what is really at issue and how we shall proceed with the amendments to this bill, namely, an agency, as most agencies do operate under statutory acts. We have before us an act and, in addition to an act, agreements, the 1965 agreement and the February 1 agreement which makes reference to an October 7 agreement. I am sure the members of this committee, as you have expressed, Mr. Renwick, are confused as to the primacy of the statutory act vis-a-vis the legality of these agreements as they relate to the statutory act.

Therefore, I would like to simply ask the legislative counsel to answer this dilemma. Is the act of 1972 binding in primacy or does it supersede any agreement, be it that of 1965, February 1 or October 7, whatever relationship they may have. This is an issue that was raised, and I feel you might want a statement or perhaps a comment before we proceed, because this will be raised time and time again as we proceed with this bill.

Mr. Renwick: Mr. Chairman, I appreciate your comments. I put it the way I did because I think it would not be fair to the legislative counsel to ask for an opinion with respect to those matters. There is just no way he could give it without serious reflection. I appreciate the fact you are concerned about it.

I happen to think, within the next two or three days when we complete this bill, we are not going to have a final piece of work. I think all we can do is to lay the groundwork for a thorough understanding of the foundations of this public trust and to see that it gets straightened around for the future so that we have learned from the sadness of the past. That is why I wanted to go on if I may, Mr. Chairman. I will only take a couple more minutes to ask Mr. Court some questions.

Mr. Renwick: This may be a dead-end question, Mr. Court, and I am not certain I understand it. I have here a document which is Mr. McMichael's response to the Blunden Harbour totem pole question. It runs to several pages and has a number of attachments to it. The prefix to it is a page and a quarter which has documents on the lefthand side and observations on the righthand side. I would ask you, sir, whether or not you have ever seen that document or are aware of it. I am asking about the first page and a quarter.

12 noon

Mr. Court: Yes, indeed. The Blunden Harbour matter of course has been a matter of public concern or public mention for a couple of months now.

Mr. Renwick: I just wanted to know if you had seen the first page and a quarter of that document?

Mr. Court: Yes.

Mr. Renwick: Did you prepare it?

Mr. Court: No, sir.

Mr. Renwick: Do you know who did?

Mr. Court: No, sir.

Mr. Renwick: You have no idea?

Mr. Court: Not with any positive assurance, no, sir.

Mr. Conway: But with your best recollection.

Mr. Court: I hope I have answered with my best recollection.

Mr. Renwick: You can't throw any light on under whose instructions that document was prepared?

Mr. Court: There were a number of issues of this sort which arose in the course of the Klein and Sears interviews with members of staff at the gallery. Just to give you some background on this, during the Klein and Sears feasibility study, part of their mandate was to conduct interviews with all of the senior members of staff of the gallery and a number of others, such as the building superintendent, who had intimate working knowledge with not only the structural affairs and visitor services of the gallery, but with the management affairs of the gallery and its art acquisition affairs, if you will, as part of the total mandate of particularly the first phase of the Klein and Sears study.

Mr. Renwick: Is that therefore a background piece of work done for the Klein and Sears report?

Mr. Court: I don't believe it was in the course of their own work. As I was about to say, sir, a number of issues of this sort were raised in the course of the data-gathering phase of the Klein and Sears study to the consultants by members of staff.

Mr. Renwick: I think you have a great future in the bureaucracy, sir. I don't understand you.

Mr. Chairman: Mr. Renwick, before we proceed, would you be willing to provide a copy to all the members of the committee of that particula item?

Mr. Renwick: Sure. I am trying to establish who took the time and trouble to write that page and a half. That is what I want to try to find out. You are telling me you don't know who did that?

M. Court: That is right.

Mr. Renwick: Thank you. Mr. Taylor, do you by any chance know who prepared that document?

Mr. Taylor: No, I do not. I can say without equivocation I do not know who prepared it.

Mr. Renwick: Perhaps I could ask the minister. Is the minister aware of who prepared this?

Hon. Mr. Baetz: Mr. Chairman, I haven't even seen the thing, so I can't tell you yes or no. Shouldn't we all have a copy?

Mr. Renwick: I know it was Mr. and Mrs. McMichael who prepared the response, but I am interested in who prepared the first page and a quarter.

Hon. Mr. Baetz: No, I have never seen this before, Mr. Chairman.

Mr. Renwick: I don't want to take up a lot of time, Mr. Taylor, but the reason I wanted to raise it was that the observations and then the comments in it contain some pretty damaging statements with respect to conflict-of-interest questions. I can't believe that it was not done under some kind of authority or direction. I am very curious to find out who authorized it or directed it or suggested that it be done.

Mr. Taylor: I can say, sir, it was not authorized or directed, it was not suggested by myself or by any member of the board or, to my knowledge, by anybody on staff.

Mr. Renwick: And to your knowledge, Mr. Court, it was not directed, and you have no knowledge about how it came into existence? You have never seen it before?

Mr. Court: No, I did not say I had never seen it before.

Mr. Renwick: When did you first see it?

Mr. Court: My recollection would be that I had seen it in a meeting with the then vice-chairman of the board.

Mr. Renwick: He had it in his possession?

Mr. Court: Yes, he had been asked, I think, to relay it and supporting documentation to the chairman of the board as matters of concern which, I started to say, arose out of the Klein and Sears study, but which Klein and Sears felt, quite rightly, were beyond the scope and mandate of their study, but nevertheless were issues of sufficient substance that they ought to be brought to the attention of the board chairman.

Mr. Renwick: The first time you saw it was in the hands of the vice-chairman of the board?

Mr. Court: Yes.

Mr. Renwick: Is the vice-chairman here by any chance?

Mr. Taylor: No. Mr. Warren Jones would be prepared to appear, but he is not here.

Mr. Renwick: I am curious about what the origin of that document was. My sense, certainly at the present time, is I am quite prepared to respect Mr. and Mrs. McMichael's desire for their privacy and not to be subjected to some kind of public discussion of this whole question, but I am deeply concerned about how that kind of document started to float around and required Mr. McMichael, obviously, to have spent a considerable amount of time reconstructing the whole of the account of the acquisition of the colloquially spoken of Blunden totem pole.

Mr. Court: Certainly, it did not float around; it was never shared with any members of staff at the gallery. It has not to this day and did not at that time pass through any hands other than mine as a relay to the vice-chairman and the chairman of the board in my capacity as secretary to the board.

Mr. Conway: As a supplementary to Mr. Renwick's problem, and I have just briefly looked at the document, I guess my question is to both Mr. Court and to Mr. Taylor. Does it not distress you that information in that first page and a quarter clearly appears to be derivative of very sensitive insider information? That is the part that distresses me. Accepting what you have told us about your knowledge, that you absolutely or you have generally no understanding of where this originated, except to say that you first encountered it in the hands of the vice-chairman of the board, is it not of some concern to you that some, if not all, of the information in that first page and a quarter appears to have been derived from very sensitive inside information that could only have been known to or available to people at either the board or the ministry level?

Mr. Taylor: May I answer that, Mr. Conway, because my reaction was exactly as you express it? The vice-chairman of the board was the chairman of the task force that was working with Klein and Sears from the board level in the preparation of the Klein and Sears report, this being done with the concurrence of the entire board.

The vice-chairman of the board telephoned me and said that some material of an anonymous nature had been placed in his hands which concerned him and he felt I should know about it. At my

request, he placed a copy in my hands and my reaction was one of strong indignation because I do not like anonymous documents. I have never had to do with them, I have never prepared one and I have never in any indirect way encouraged the preparation of one. I think people who prepare anonymous documents speak for themselves in their standard of conduct.

I read some of the material. To me, at that time and to this day, it was nothing more nor less than an illustration of the confusion that has existed in the minds of Mr. and Mrs. McMichael about the collection as a private collection in a private home that was being conducted for the benefit of the people of Ontario, to which Mr. and Mrs. McMichael were giving everything that they had, and the need for the maintenance of what Mr. Bell is now going to bring to the collection, and that is professional management of a large institution.

12:10 p.m.

I soul-searched my conscience on what I should do because this anonymous material had been put in my hands. I went to Mr. Laird Smith who is one of the trustees. He was a highly respected counsel in Montreal for many years, a senior partner in a large firm--Mr. Renwick may be familiar with his name--and a man of the highest integrity. He and I met and discussed this material and we came to the same conclusion.

Without reporting it to the rest of the board because we felt the dissemination of any of the information should be discouraged, we first of all went to Mr. and Mrs. McMichael and talked to them. We told them that as far as we were concerned, we were not parties to the kind of thinking that was contained in the documents. I remember saying to Bob after they had read it and we had discussed it, "Bob, some of the things you have done are unwise but in no way am I going to associate myself with the suggestion that they are dishonest." They were unwise in the sense that they did not realize the distinction between the public corporation and their own funds. They were conducting the collection as they had originally, as a private collection.

Mr. Laird Smith will bear out that both he and I used two terms to Mr. McMichael. I said, "Some of the things that are in here certainly represent unwise actions, but none of them to me represent dishonesty." I had righteous indignation then as I have today at the preparation. I did not attempt to find out who prepared them because I knew I could not have found out. If I were to guess--and it is purely a guess, if you want me to do that--they may well have come from some disillusioned staff member. There had been many staff changes and many people who had left the staff with considerable rancour. They may have come from that.

I will tell you what I did then. After talking to Mr. McMichael and with his full knowledge and that of Mrs. McMichael, Mr. Laird Smith and I sought an interview with the minister and with the deputy at the time and we told them the story. We told them that our opinion was that there should be no credibility attached to these anonymous documents and nothing should be done about them, that we would do our best to make sure that no one knew of their existence, not even the other members of the board.

Mr. Renwick: How many were there?

Mr. Taylor: There were about five or six. They covered a range from the Blunden Harbour one with inferences that are distasteful to anybody, to some things that were extremely petty having to do with housekeeping chores in their apartment. I would think there were about half a dozen subjects.

Mr. Conway: I am just wondering about a couple of things. Did you in your meeting with the minister and the deputy convey to the minister and the deputy at the time the information in it?

Mr. Taylor: Yes, but we strongly recommended to them that in fairness to the name of the collection and particularly the name of the McMichaels, because of our conviction that it was a completely unfair attempt to discredit from the standpoint of integrity--

Mr. Conway: Can you then help us, not now necessarily, because like the rest of us you will have to go through the documents in their entirety, but would you at some point at your earliest convenience indicate to this committee whether or not any or all of that document that Mr. Renwick asked you to comment upon was incorporated as part of or all of the information you discussed with the minister and the deputy that day when you met them?

Hon. Mr. Baetz: You conveyed it to us in verbal form. You described it at that time as you have just described it now.

Mr. Taylor: I did not leave copies with the minister. I felt the fewer copies of that trash that were available, the better.

Hon. Mr. Baetz: I took the chairman's word when he said, "There are a lot of allegations here." He reviewed some of them, but he said, "Frankly, I just want to assure you, Mr. Minister, there is nothing criminal or immoral in here." I think maybe he might have used the word "stupid" or "naive."

Mr. Taylor: I did use the word "stupidity," yes.

Hon. Mr. Baetz: I think you did. Yes. You said, "It is stupid, but it is not immoral and it is not criminal, and Mr. Minister, you should just let it go at that." I was pleased, on the assurance of the chairman and Mr. Larratt-Smith, that was the situation--to drop the matter.

Mr. Renwick: So you have not got any problem.

Hon. Mr. Baetz: I have no problems.

Mr. Conway: Mr. Taylor, my point is simply concluding that point.

Mr. Chairman: Mr. Conway, we have a supplementary from Mr. Kennedy.

Mr. Conway: Yes. If he will just defer it a second, I want to finish my supplementary. The point that concerns me is that when one looks at the information, I can appreciate your conclusion who it might be, as a guess.

Mr. Taylor: I could not guess the individual--

Mr. Conway: No. I appreciate that. But to the outsider--and I put myself in that position--one gets the very distinct worrisome impression that there is a mole somewhere--quite frankly, in my view, a fairly high-place mole, because the information that is being routinely gathered and passed on is not something that a receptionist or a tour guide is going to have access to. Since we have already been lectured this morning about ethics, and since undoubtedly by virtue of my looking at future testimony we are going to be homilized, if that is a word, about ethics, it distresses me no end to read in today's press that as well additional information, which is coming from somebody who has some very good access, is apparently being almost routinely passed around.

Since much of the material being passed around is of the nature of character assassination, and since the character who is being assassinated, in my view, is Mr. Robert McMichael and his wife, I conclude, furthermore, that he is not engaging in an exercise of self-destruction. I have to conclude that the range of possibilities for this, in my view, highly-placed information, is fairly limited. I accept entirely what you have said, but it concerns me none the less that in today's paper--and I refer to the Toronto Sun article of Wednesday, February 3 under the heading, "Strange Picture"--there is the statement, "Leaked documents outline problems at McMichael." Apparently, your very best efforts are still not securing some or all of that flow of information. I just end my comment with that statement of concern.

Mr. Taylor: I am not surprised because, despite my best efforts--and I would hope you would believe that I am sincere in saying that I did exercise best efforts, because I may not be anything but I try to be ethical, and Mr. Larratt-Smith will bear out exactly what I have said--it was hard for both of us to say the thing to do is to sweep this under a rug. We urged Mr. and Mrs. McMichael to do the same thing. I told the minister and I subsequently told the Provincial Auditor. He heard of it and came to me and I told him of my strong convictions that in the interests of fair play and the reputation of the McMichael collection, we should do nothing, and that I would take that responsibility. I subsequently was shocked to learn from two of the newspapers in Toronto that brown envelopes had been delivered to them a year ago containing copies of all these allegations. There was a very strenuous attempt to get me to comment, without success.

Mr. Renwick: Perhaps just to make certain that we tidied the matter up as best we can, I would like the vice-chairman of the board, if he would be available, simply to let us know how they came into his possession.

Mr. Taylor: Yes. He is a former vice-chairman, sir. I am sorry.

Mr. Renwick: A former vice-chairman, yes.

Mr. Taylor: Yes. Mr. Warren Jones, who retired in 1978, I guess it was.

Mr. Renwick: I just want the record to show how they came into his possession. I can certainly well understand why it would be that Mr. McMichael would not want to be subjected in this forum to that kind of question. I share the distaste you have expressed--

Mr. Taylor: I hope you can sense it because it is there.

Mr. Renwick: I want to make certain that nobody thinks it came to me in any brown envelope. Mr. McMichael gave me copies of them to illustrate to me the time and care that he and Mrs. McMichael went to to try to answer these slurs on their reputation. To have the benefactors of this province, Signe and Robert McMichael, subjected to having to reconstruct an answer to an anonymous document of a severely damaging nature seems to me to be something which should exercise the minister even at this late date very seriously.

12:20 p.m.

I would be inclined to think you should take counsel's advice as to whether or not you should apprise both the police and the Attorney General or the Solicitor General of these matters to see if it can be found out whether anyone in the public service--and I include employees of the McMichael Canadian Collection either past or present--is responsible for these documents.

I am simply appalled at the corridor gossip and innuendo that has floated around damaging the reputation of Mr. and Mrs. McMichael. I wouldn't dream of asking Mr. and Mrs. McMichael to come before this committee to even comment about any of these documents. But I will not stand, as a member of this assembly, and I am sure my colleagues feel that way, to see a benefactor of this province have his character assassinated by corridor innuendo of that nature.

I think it is incumbent on the ministry and incumbent on you, sir, with the greatest respect, to take the best advice you can to find out the source of this kind of information. I agree with Mr. Conway that someone has meticulously had access to and sat down and examined a large number of documents and then purported to make damaging observations about them. I now understand the hurt that Mr. and Mrs. McMichael must feel about what has happened, about their immense benefaction to this province.

I think, as part of the reconstruction of the reputation of the McMichael collection, this must be a prime part of that. Otherwise, the corridor gossip and innuendo will continue and there will be a total misinterpretation of why this committee was the catalyst that forced some kind of an agreement at a late hour.

Mr. Kennedy: I want to ask Mr. Taylor this: In your position as board chairman, subsequent to assuming the post, were Mr. McMichael's correspondence files as executive officer ever available to you at any time?

Mr. Taylor: I have never had occasion to ask for them to be made available to me. I don't regard it as the role of the chairman to--unless there is a specific question. I don't think I

have ever had a specific question to put to Mr. McMichael and I have no reason to think that he wouldn't have complied with it had I done so. I hope I am answering the question.

Mr. Roy: Surely the files were available. For instance, when you came this morning and gave us a chronology of what took place, his files must have been available to somebody to get that information.

Mr. Taylor: This material was prepared from general files. I thought you referred to the files of the executive director.

Mr. Kennedy: Right, the files and correspondence of the executive director. At your board meetings, did you have an item that was entitled "correspondence." As well as administrative items, I am thinking of the fire safety situation. Had that correspondence been available, it would have certainly alerted the board at any earlier time to the problem. Am I correct in that assumption?

Mr. Taylor: Yes, but I think my concept of the chairman's role does not call for me at any time to go in and search through files to see what I can find by way of material that the director has not supplied to me. I would think that would be interference.

Mr. Kennedy: I was thinking of it in the context of this having been provided to you or to the board at a regular meeting. It would seem to me to be a routine procedure.

Mr. Taylor: I am sorry, I am sure I am missing the point, Mr. Kennedy, and I am not trying to be evasive. You are referring to the chronological references on the fire question?

Mr. Kennedy: Yes. You mentioned some time ago that your first knowledge of the problems with respect to fire hazard came back to you, if I understood it correctly, from the ministry.

Mr. Taylor: That is correct, sir, yes.

Mr. Kennedy: Had the files and correspondence, particularly on gallery letterhead, which would indicate it is official, been available to you, would you not have been alerted to a very serious problem at an early time, or the board?

Mr. Taylor: I would have initiated a request for the files. As I say, my concept of the director's role is that it is his responsibility to keep me informed. It is my responsibility, on the other hand, to keep out of his hair. It was not initiated by him; therefore, I did not know that any of this material was in files.

Mr. Kennedy: There could have been a bit of a vacuum, depending on how it is interpreted, over several years.

Mr. Taylor: It was a breakdown of communication, yes.

Mr. Roy: May I ask Mr. Taylor a couple of questions, Mr. Renwick, just on this question that you raised?

Mr. Renwick: I just wanted to finish off my comments, then Mr. Taylor I am sure will answer. I just have a couple.

I understand that you will do your best to tell us the exact number of these documents that were available, and if it is possible, would you furnish privately to the chairman of the committee a copy of each of them?

Mr. Taylor: Yes, sir.

Mr. Renwick: I do not want to inconvenience Mr. Larratt-Smith, but if you believe that it would be of any assistance to this committee for Mr. Smith to appear, to tell us about this, then I would like to hear from him about what exactly took place. I do not think we can conduct the inquisition as to who offered these documents or why, but I think the record should show the high level to which the matter reached.

The second, and I think the last thing, sir, is this: As a result of your visit with Mr. Smith to Mr. McMichael, did Mr. McMichael, having prepared this, feel under an obligation to give you his explanation of it?

Mr. Taylor: No, sir. In no way did we encourage him to--

Mr. Renwick: But did you then receive his explanation?

Mr. Taylor: I did. He sent me a copy; yes, he did.

Mr. Renwick: And did you feel that that called for any further action on your part?

Mr. Taylor: Rightly or wrongly, sir, I did not. I felt it confirmed my initial conviction and my present conviction, that it showed poor record-keeping and lack of understanding of the distinction between personal records and--

Mr. Renwick: I would not impute right or wrong. I just wanted to find out that you did receive Mr. McMichael's response to each of these allegations and that was a closed book as far as you were concerned.

Mr. Taylor: In hindsight I may have been completely wrong in doing everything that I could to see that this thing died where it should never have been born. I really thought for a period of close to a year--these came to my attention in May 1980--and I think it was well into 1981, a year ago, before there was any indication to me that we had not been able to bury it. I had spoken to the minister and his deputy. I had spoken to the Provincial Auditor and Mr. Larratt-Smith and Mr. Warren Jones and I knew, and I think, until then, none of the other trustees even knew.

Then, as I said, there were two brown envelopes delivered to two of the Toronto papers and I received calls. After that and discussion with Mr. and Mrs. McMichael, I told the rest of the board in confidence of this damned thing, if I may use that term. I may have been entirely wrong in not proceeding in a different way at the time. It was a judgement decision and I can only say it was done with the best of intent.

12:30 p.m.

Mr. Renwick: Obviously, you have no idea whether the person is still in the employ of the gallery?

Mr. Taylor: No, sir, if I had I would tell you. I can say honestly I have no idea. I am giving you as pure supposition a feeling that has gnawed at me that it had to be somebody who had been on staff or, indeed, is on staff, and I hate the thought of that, but somebody who--well, I don't know. Under oath, I could not give any indication of who I thought prepared any of these allegations.

Mr. Renwick: Mr. Chairman, could I have one last question to the minister and his deputy? Would you, sir, please request any member of your ministry or anyone who has any relationship with your ministry and who has any knowledge of the authorship of these documents to come forward before this committee and speak to the chairman and make known any information he has about the authorship of these damning documents. Would you agree to that, sir?

Mr. Chairman: I would just like to comment, Mr. Renwick, that this committee will not be acting as judge and jury on any allegations. I do not want to have the procedure moving in that direction.

Mr. Renwick: I simply want the minister to ask those under his instruction and his control and under that of his deputy, if anyone has any knowledge of the authorship of these, to be good enough to come, sir, to you as chairman of this committee and make any information they have known to you, so that we as a committee can decide, we hope, how to deal with the matter. Mr. Minister, would you agree with that?

Hon. Mr. Baetz: Yes, but you asked for the ministry staff not for the gallery staff. Mr. Chairman, I know you want to conclude this matter here, but I do want to go on record as really complimenting the chairman of the board and Mr. Larratt-Smith for the very sensitive and caring way they handled this situation. I must say I was relieved when they spared me from hearing all the details of these allegations. They simply gave me the rubrics of the allegations, nothing more. As I said earlier, they assured me, and I needed this assurance, that there was certainly nothing criminal, in their judgement, nothing immoral, but rather, as Mr. Taylor said earlier and as I indicated, probably bad judgement and some naivety. But I really think Mr. Taylor acted in a very correct manner.

Mr. Roy: Mr. Chairman, if I may--

Mr. Chairman: Be mindful of the clock, Mr. Roy.

Mr. Roy: I take it, and I do not want to be repetitious--Mr. Chairman, you will cut me off, I am sure, if I am--Mr. Taylor, that subsequent to finding out about these brown envelopes and the leaked documents, there was no directive issued within the board or within the institution called the gallery that there be some sort of investigation to determine who may have prepared and released such documents?

Mr. Taylor: No, sir, there was none.

Mr. Roy: I take it, Mr. Minister, that since you were advised of such documents there has been no internal investigation within your ministry of who may have prepared or released these documents?

Hon. Mr. Baetz: No, there wasn't, Mr. Chairman, and quite frankly, I did not feel this was necessary in my ministry because normally I don't think the ministry staff would have access to this kind of information in the gallery. It would be highly unusual if they were to have this kind of access.

Mr. Roy: I appreciate that. I have some difficulty myself in associating this type of despicable conduct, which has been referred to by my colleague as being something that is criminal, requiring the assistance of the police. I would have thought that at least, considering that it was such a vile character assassination of a very sensitive and charitable individual in this province, there would have been an investigation, internal or otherwise, to determine the source of such information. I must say I am a bit surprised that such investigation did not take place. I have to make those comments.

Mr. Taylor: It could be an error in judgement on my part, sir. It was done with the best intent.

Mr. Roy: I have a second question to ask Mr. Taylor. Following the fact that this information had been released, and the press asked you to comment, did the board feel, or did you feel as chairman of the board--and considering the approach you took, quite rightly, that this was unfounded at times, it was petty, it was character assassination--that you should issue a public statement, publicly dissociating yourself as chairman of the board from this type of character assassination?

Mr. Taylor: No, sir, I didn't. I was attempting not to escalate it. I could well be wrong, but I was attempting to do everything I could to keep the thing from escalating.

Mr. Roy: I understand, Mr. Taylor, that at first you were hoping that this thing would die, but obviously it did not die; it got to the press and was published by the press at various times. I think we saw an earlier version of some of this in the Globe and Mail. I may be unfair to the Globe and Mail, but I recall seeing some of this.

Certainly you were aware that this document was circulating within caucuses here at Queen's Park, I am sure, and that we were hearing the information here and there, that Mr. Renwick had it and some of our caucuses had this information, that maybe it was not going to die. Considering how this matter progressed and how damaging it was, did you not feel at some point that you should make a public statement expressing your disgust at such action and dissociating yourself from the character assassination of Mr. McMichael?

Mr. Taylor: I can't document it, Mr. Roy, but I think on not one but several occasions I went so far with the press as to say I wouldn't lower myself to discuss anonymous documents. I left it at that point. I went so far, I am sure, as to say I put no credibility in it.

Mr. Roy: At various times you issued statements to the press in this whole episode--I think we saw some of your statements. I may be unfair to you--again we are looking at this in retrospect--but knowing your high moral standard and the way you felt about this type of action, I would have thought at some point a complete statement should have been issued.

I make the same comment to the minister. I may be naive in this, but some of us got the impression that somehow this information was being disseminated or distributed with the approval--

Mr. Chairman: I just wondered if you could be mindful of the time.

Mr. Roy: I have only taken two or three minutes.

I had the impression that somehow this information was being distributed with the approval, if not the acquiescence, of either people within the ministry, or people on the board, and that this was part of the guerrilla warfare going on between the board and Mr. McMichael.

Hon. Mr. Baetz: I am surprised, if you felt that way, that you didn't ask us whether we were helping to disseminate it. Why didn't you ask? I think your own leader in the House asked me whether I was aware of these allegations, and I said I had heard about them but had not seen them.

Mr Roy: You will admit, Mr. Minister, that at no time did you make a statement to the effect that you, as minister, wanted to dissociate yourself from the information that was being propagated against Mr. McMichael. I haven't heard it from anyone before today. I am glad to hear today that you take that approach, but I am sorry to say that I think it would have been very helpful in the process if, at some time, a statement had been issued from you people to the effect that you wanted to create some distance with this conduct and the high standards that you uphold within your ministry and within the board. I must say I am disappointed by that.

12:40 p.m.

Mr. Chairman: I am afraid we will have to adjourn this meeting.

Mr. Conway: Mr. Chairman, I have one, I believe, very important general question that I would like to address to Mr. Taylor and Mr. Bell, and I do not want to prolong it because we have gone over time. I would be glad to do it at two o'clock.

Mr. Chairman: I would appreciate it since once again we have kept another witness. Mr. Taylor, could you wait for a few minutes and perhaps answer Mr. Conway?

Mr. Conway: I would like just to address a general question to Mr. Bell and it will involve at some point, I think, Mr. Taylor. If Mr. Bell wants to come forward, I will get it out of the way.

Mr. Bell, am I correct in saying that you became executive director of the McMichael Canadian Collection as of about June or July 1981?

Mr. Bell: July 1.

Mr. Conway: July 1, 1981. Prior to that, you had been doing what?

Mr. Bell: I was the acting director of the National Gallery of Canada.

Mr. Conway: And for how long?

Mr. Bell: I was acting for about three months, and before that I was assistant director for public programs for approximately 24 months, and before that I was the visual arts officer of the Ontario Arts Council, and before that I was the director of the Agnes Etherington Art Centre in Kingston.

Mr. Conway: That is as I understood it. One of the things that most concerns me in this whole discussion is that we not lose sight of this very important gallery in Kleinburg in relation to the context of the general arts community. I think, as legislators, we have a job to do in putting this in some context and it is in that context that I want to ask a point which may be a difficult question--I hope it is not--for you.

A number of committee members have talked a great deal--the member for Lakeshore (Mr. Kolyn), I think, was very good about drawing to our attention the whole business about fire safety and how that has forced us all to do certain things. Two months ago the Auditor General of Canada produced a report. I am just going to summarize a couple of things in that report because I am not going to bore committee members with it, and I want some comment from one or both of you.

Mr. Kenneth Dye, the Auditor General of Canada, in his November 1981 report, said--I am quoting from a press account, but I can attest as to its authenticity; I am quoting now from the Globe and Mail of December 9, 1981--"Millions of dollars of federally owned art museum artifacts are being housed in condemned firetraps, according to the Auditor General of Canada. The exact value of threatened art is unclear, according to the federal watchdog, Kenneth Dye, because the National Museums of Canada does not even know exactly what it owns. Auditing officials say the government museum's entire collection, which includes much of the work of the Group of Seven, is worth hundreds of millions of dollars."

They go on to depict, to me, a grotesque situation, where they do not know what they have got. It is housed in things that are inappropriate, that have been condemned. I say to myself we

have a problem, apparently, that Klein and Sears have pointed out at Kleinburg. But I say what other galleries?

My question to you is that you are coming to a gallery to increase the management and improve the fire safety and a whole host of other things that we have spoken of earlier. But can you make a judgement at this point as to whether or not the problems that have been spoken of with respect to fire safety at the McMichael gallery are any worse than they were at the National Gallery in Ottawa, which has been so roundly condemned by the Auditor General?

Mr. Bell: I have not read the Auditor General's report, so I cannot say definitely how it was presented, but I suspect it was presented in very specific terms. The press account does not deal with it in very specific terms. I think you must understand what the National Museums Corporation of Canada is in the first place. It is a corporation that is made up of four independent museums, a program of granting and a conservation institute, among other things.

The National Gallery of Canada has always been considered to be the flagship institution of the national museums of Canada. It has always been considered to be the flagship institute of the museums corporation because in relationship to the other museums in the corporation the management of it and its concerns for things like conservation, fire safety, environmental conditioning, et cetera, have always been held in high regard and extraordinary measures have been taken to try to overcome those in spite of the fact that the building is almost impossible to work with.

The generality of the journalistic description there, I think, tars the National Gallery, if I may say so.

Mr. Conway: But there are very specific allegations about valuable art pieces in firetraps and I don't think that is contested.

Mr. Bell: No, but I think it can be demonstrated, and I am sure we could get the appropriate witness here, that the National Gallery building and the associated buildings that are used for extra storage meet all the requirements we would expect for safety.

Mr. Conway: Mr. Taylor, have you ever in your position as chairman of the McMichael Canadian Collection board been made aware of any agreements that the provincial government has entered into with other art collections?

I want to ask this of the minister as well, but he can answer at a later date. It is my understanding that in the national capital, in Ottawa, the provincial government has entered an agreement with Professor O. J. Firestone with respect to a specific collection. I presume there is an agreement that defines that relationship. Am I correct?

Hon. Mr. Baetz: There is the Heritage Act. Mr. McCullough could--

Mr. Conway: Have you ever seen that arrangement?

Mr. Taylor: Not to my knowledge, Mr. Conway.

Mr. Conway: Thank you. Again, I would like to have a copy, if it is possible, of the government's arrangement with Professor Firestone as it relates to that particular art collection.

Mr. Chairman: We are finished. We will resume our deliberations at two o'clock with our next witness, Mr. David Newlands.

The committee recessed at 12:47 p.m.

CA24N
XC 12
- 878

S-4

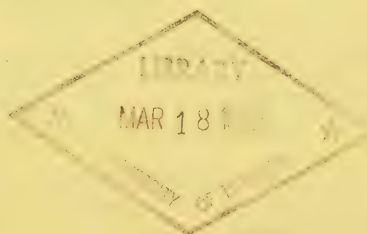
Government
Publication

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

WEDNESDAY, FEBRUARY 3, 1982

Afternoon sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Shymko, Y. R. (High Park-Swansea PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Conway, S. G. (Renfrew North L)
Dean, G. H. (Wentworth PC)
Edighoffer, H. A. (Perth L)
Fish, S. A. (St. George PC)
Jones, T. (Mississauga North PC)
Kennedy, R. D. (Mississauga South PC)
Kolyn, A. (Lakeshore PC)
Laughren, F. (Nickel Belt NDP)
Renwick, J. A. (Riverdale NDP)
Roy, A. J. (Ottawa East L)

Substitutions:

Lane, J. G. (Algoma-Manitoulin PC) for Mr. Jones
Pollock, J. (Hastings-Peterborough PC) for Mr. Gillies

Clerk: Arnott, D.

From the Ministry of Culture and Recreation:

Baetz, Hon. R. C., Minister
Cornell, W., Deputy Minister
Jones, D., Manager, Technical Services. MacMichael Canadian
Collection
Noon, M., Director, Grants Administration Branch

From the Ministry of the Attorney General:

Williams, F. N., Legislative Counsel

Witnesses:

Bell, M., Executive Director, McMichael Canadian Collection
Newlands, D., Private Citizen

From the Kleinburg and Area Merchant and Tourism Association:
MacEachern, J.A., Chairman

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, February 3, 1982

The committee resumed at 2:20 p.m. in room No. 228.

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

Resuming consideration of Bill 175, An Act to amend the McMichael Canadian Collection Act.

Mr. Chairman: I see a quorum. We are dealing with exhibit No. 10 in the briefing manual from the clerk of this committee, since Mr. Newlands, I am sure, will be making reference to that particular brief. Mr. Newlands, please take your seat. I am opening a list of speakers. Perhaps, Mr. Newlands, you would like to make a statement first, and then we will proceed with questions.

Mr. Newlands: Mr. Chairman, I would propose that I make one or two introductory comments and then read a slightly modified version of the brief which I submitted in response to the advertisement in the newspaper. In that brief, I indicate both my own involvement so people here have some understanding of why I am interested as a citizen, and then I raise some basic assumptions, which I underline are not just merely an attempt to give you a homily, as was suggested this morning, but I think are a reflection of what I, as a citizen, have read in the paper. Third, I would like to focus particularly on a number of issues with regard to the McMichael Canadian Collection Act and Bill 175.

First of all, I enjoyed sitting and listening in the last two sessions to the process of government, and did not quite know if I could live up to the expectations which were outlined for me this morning, one being that there was an expectation there would be some homilies. So I went back to my office and got my Concise Oxford Dictionary to find out what I was expected to do. I understand that a homily is a sermon, especially for the edification of its hearers. Also, an alternative definition is "tedious, moralizing discourse." After reading that, I felt I was in a position not to have any corner on the market.

The second point is--and I really, sincerely believe this--since I work for a university which has firetraps, so I am told, I hope you will not take the fact that I work for that university as any imputation on my professional credentials.

Let me then, please, with your permission, make a few comments before reading the brief. I would like, first of all, to say that I wrote the brief in response to an advertisement which had a particular deadline of January 22, and, of course, I would, as I hope to, make a few amendments after having listened to the deliberations here. It is necessary and important for me to preface my comments by a few general remarks.

First of all, my intent was not to solve or to speak on

political issues, but to speak about what I consider to be professional issues. Second, I think personally that it is important to look at the future rather than dwell on the past, and third, I would like to say that my intent in drawing the brief was to look at issues, particularly the collection at McMichael, and not particularly any individual or combination of individuals.

Fourth, my intent was to concentrate on what I consider to be professional issues in the public sphere. I have no private sources of information. I have nothing but what I have been able to read as anyone has been able to read and hear in the press and on the radio. Therefore I must take that as, in some cases, unreliable information, but it creates a certain uneasiness in my mind, and that is what I am speaking to in general terms.

I am submitting this brief concerning the McMichael Canadian Collection Act and Bill 175 because, as a Canadian citizen living in Ontario and a person who has worked in and for museums and art galleries for some eight years, I believe that the proposed changes to the McMichael Canadian Collection Act and the issues raised by certain individuals through the media concerning the past operation of the McMichael Canadian Collection need to be addressed by this standing committee.

I have served for three years on the Council of the Ontario Museum Association, one of them as vice-president, and in that capacity, I might comment I had the distinct honour to thank the deputy minister who spoke before that body at one of its annual meetings, and I also had the pleasure of putting my comments, at that time, into print. Essentially, those comments were that my own professional experience with the ministry has been with great pride, that particularly their museum section, I think, is the best in North America, if not in a larger sphere; that a great deal, if not all of what the ministry is doing, I think, professionally, is of the highest calibre.

I continue to serve on a number of museum and museum-related boards, representing local and international organizations. In my research on early Ontario pottery I have visited a large number of Ontario museums and art galleries and have had the opportunity to meet many museum professionals to see their collections and to know about their aspirations and concerns as museum people.

For the past four and a half years I have been co-ordinator of the master of museum studies degree program at the University of Toronto. This program is the country's only university degree program that prepares leaders for museums and art galleries; it is one of three in the Commonwealth. For more than 12 years the program has produced graduates who have assumed important positions in museums, art galleries and related cultural organizations from Newfoundland to British Columbia and in several countries throughout the world.

Our students have not been unaware of the McMichael Canadian Collection and the issues now in public view. About four years ago a class studying the conservation of cultural materials visited the collection and, in the course of the visit, took readings of light levels on the paintings. I am told by the students, since I was not

the instructor on that particular part of our course, that a subsequent news story about the collection in the Toronto Star, though not related directly to the students' visit, was written as a result of a reporter seeing the students taking light levels.

Most recently, one of our students spent three months as an intern at the collection, and during her assignment worked closely with the new administration in planning visitors' studies and many of the very routine mundane tasks associated with any art gallery.

The changes which are being discussed for the collection in its improvement of services to the public will be welcomed by all those who believe that our cultural organizations should respond to the needs of their visitors.

Before addressing the major issues I see in the McMichael Canadian Collection Act and in Bill 175, I would like to outline what I consider to be three basic assumptions underlying my comments, assumptions generally accepted by museum professionals in Canada. These basic assumptions should be considered by members of this committee and those who work in provincially related museums and art galleries, and I would like to summarize those as follows:

1. Those who are responsible for the management and programs of public museums, art galleries and related cultural organizations should be expected to adhere to the highest standards of ethical behaviour in all their activities and transactions, in awareness of the public trust placed in them. Museum and art gallery professionals who are responsible for public collections have a responsibility to follow professional standards of ethics and conduct. Those who have tried to work by such standards will understand, as I do, that there is no simple or easy way to ensure compliance with such standards. As with other professions, there are grey areas for which there is no quick and easy answer. Where such grey areas exist, it is important for museum and art gallery professionals to conduct themselves so that the integrity of the institution, which is so highly visible to the public eye, is never in doubt.

2. The assumption implied in the transfer of works of art to the crown is that the intent of the transfer is the protection and interpretation of that collection. It is the concern for the maximum protection of the collection to advance the "splendid benefaction", as one member of this committee mentioned yesterday, that needs to be addressed at the time that changes are made in acts.

3. Provincially funded cultural institutions should not be excused from the responsibilities of good management. They should use funds as intended, both earned and unearned revenue. They should have an active board of trustees of knowledgeable, public-minded persons. The institution and the board of trustees should be accountable to the wider public, directly to the government and indirectly to the public.

4. The gallery and its various programs should be subject to regular professional evaluation, so that those responsible for the institution are able to assure the government and the taxpayer that

there is value given for public money invested and expended. Regular audits of those provincial institutions should also include the audit of the collections for, in fact, the collection is a form of assets.

Basing my comments then on these four assumptions, which I believe are well established in professional practice, there are a number of issues I would like to direct to your attention and to share with you my own personal views.

2:30 p.m.

Issue No. 1: The director of a cultural organization should not be at the same time a trustee of that organization. Section 7 of the agreement between the crown and the McMichaels dated November 18, 1965, established an advisory committee of five members, two of whom were the McMichaels. This advisory committee was empowered to act as trustees in section 8 of the act. Section 23 of the same agreement made provision for the McMichaels, if they so wished, to be curators, advisers and supervisors of tours of the collection. These provisions were continued in the McMichael Canadian Collection Act, section 18(a) through (c), where the McMichaels were made trustees and Mr. McMichael the director of the collection.

In consideration of the general principles of trusteeship in cultural organizations, the original agreement and the act created a potential conflict of interest. Although the dual appointment of Mr. McMichael as trustee and director was meant to recognize his generosity and interest as donor, it created a situation that left him and the institution open to public criticism. Trustees should not, in my opinion, act in any staff capacity as long as they serve as trustees.

The minister should be encouraged to appoint to provincial galleries, museums and related cultural organizations persons to serve as director, director/curator, superintendent, or whatever the name of a position of chief executive officer is, those who have recognized credentials in a relevant academic subject, as well as a record of outstanding museum or art gallery professional achievement. Directorships, and especially curatorships, should not be used as rewards for generosity, but for those who are able to demonstrate professional achievement and the necessary administrative abilities.

In this regard, section 5 of Bill 175 should be, in my opinion, amended to read, "Robert McMichael shall be the founder emeritus of the corporation," and further changed to prohibit the founder emeritus, or whoever may in the future serve in the role of founder emeritus, from serving on the board either permanently or temporarily while at the same time having any staff, that is any line, responsibilities that would be accountable to the director.

The provision in Bill 175 enabling the Lieutenant Governor in Council to grant remuneration to Mr. McMichael out of the general fund of the corporation is unwise, and establishes a bad precedent with regard to the use of general funds of cultural organizations. In my experience, I can think of many curators emeritus of large

organizations in this province who have given of their time and their generosity and built up in their own specialized areas large collections for which we have great public admiration, who do not have such a provision. All I am suggesting here is that it would be unfortunate if this were to create a precedent in other institutions.

I recall hearing yesterday a concern about precedents with regard to preambles and it appears that what does happen in acts of parliament here is that they do create precedents, or at least do in some people's minds create those kinds of things. I understand from reports in the newspapers that the government's intention in this section is to provide Mr. McMichael with remuneration in recognition of his contribution to the collection. There should be other ways to express such appreciation rather than the use of general funds of the organization.

Issue No. 2: The board of trustees should be large enough to represent the many segments of our society who are interested in the future direction and operation of our province's cultural organizations. As mentioned earlier in this brief, the original agreement created an advisory committee of five members. The McMichael Canadian Collection Act, section 3(1), stated that the Lieutenant Governor in Council should appoint trustees to the corporation not fewer than five and not more than nine in number.

There is a growing body of museological literature which has dealt with the subject of boards of trustees. It had generally been shown that more representative boards of cultural organizations have been an important and positive development. I would direct the attention of members of the committee to the act, which created a board of very limited size. The act should, in my judgement, be amended to provide for larger and more representative boards and should specifically provide appointments for the following interest groups. Before mentioning them, I might also indicate the people even under these categories should be knowledgeable and capable of administering. They should not merely represent a private interest, but also, I would assume, the broader interest of the collection.

Such interest groups might include, and I am not stating this in any kind of categorical or final form, a representative of the community of Kleinburg, the staff, perhaps the future members' committee representative, a professional or public art gallery organization such as the Ontario Association of Art Galleries. One might also add the Metropolitan Toronto and Region Conservation Authority, whose original intent was to take the land and make it a more generally accessible area. I could go on. I am sure we all have ideas as to what might represent a broader public involvement in this institution.

I might also point out that supposedly the direction of the federal National Museums Act, and the statements on the federal level, were revolving around the two key issues of democratization and decentralization in our cultural organizations. It seems to me that implied in the concept of democratization, is opening up the boards of our public institutions to broader public input, broader public visibility.

Therefore I would recommend that Bill 175 make provision for a larger board of trustees. Although my brief specifies the number, I do not feel I should hold to that at this point. But certainly I would recommend, if asked, something not less than 13 and not more than 21. I could have said 12, and I thought of that originally because a lot of paintings represent 12s, but it seemed to me that there would have to be someone to break a tie, so I recommend 13.

3. Public collections should not be sold, traded or otherwise disposed of to an individual, a private organization, a nongovernmental or a noncharitable body. The sale, trade or other form of disposition of public collections, has important implications for further donations to public institutions. The alteration of collections should not be sanctioned unless conducted under the most meticulous procedures and guidelines. Public disclosures of the sale of parts of the McMichael collection to art dealers and individuals at what appears--at least from the public press--to be a low market value, whether true or not, have profound repercussions throughout the museum and art gallery community in this province.

People who give their family heirlooms and other things of great personal importance do so with trust, and with the understanding that their donation is given with the intention that it will become a permanent part of an institution's collection. The sale of museum or art gallery collections to individuals, private organizations, nongovernment organizations or noncharitable bodies, cannot but create public concern that materials in other institutions are being handled in such a way as to violate the trust assumed by that organization at the time they accepted the donation.

I am pleased to see that Bill 175 makes specific reference to this matter in section 22. I would like to recommend to the committee that this section be further strengthened, for I believe that when any part of a collection of a provincial museum, provincial art gallery or related provincial cultural organization, is no longer deemed necessary for the collection of that institution, if that institution cannot find another public museum or art gallery to acquire that collection, then the material should be transferred to the Ontario Heritage Foundation, who shall undertake to dispose of the material consistent with the terms upon which it was given, and in consultation with the donor.

The Ontario Heritage Foundation has been serving an important and valued function in seeing that materials of cultural importance are deposited in appropriate institutions. I personally see no reason that they cannot be used in regard to this material, and certainly that they cannot be used in regard to any materials no longer needed by the McMichael Canadian Collection, or any other provincial museum or art gallery.

I know from my travels, and I have been to, I am sure, 100 or 150 museums, art galleries and libraries in this province as speaker. I know many of these community museums, art galleries and related cultural organizations would have been pleased to have acquired material that was deemed no longer important to the McMichael collection. I have not read, nor have I heard of, any

compelling arguments to support the regular practice of selling unwanted parts of public art gallery collections to or through private art dealers.

2:40 p.m.

4. The Minister of Culture and Recreation should, I think, assure the House and the people of Ontario that provincially-funded museums, art galleries and related cultural organizations, have statements of principles and policies on ethics and conduct, binding on all who are responsible for the protection of that trust, including trustees.

During the public controversy surrounding the past operation of the McMichael Canadian Collection, I believe it is important that the minister give assurances to the people of Ontario that institutions such as the McMichael Canadian Collection, the Royal Ontario Museum, the Art Gallery of Ontario and all the other provincial level institutions, have comprehensive and adequate statements of principles and policies on ethics and conduct for all who are responsible for and with those organizations.

I do not wish to imply by the above statement that these organizations are not operating by the highest standards at this time. What I wish to emphasize is that in view of the clouds that have passed over the McMichael Canadian Collection, it would be opportune for the minister to give such assurances, so that those who are now directing the collection will be able to proceed with any lack of public confidence.

If in fact important provincial organizations do not have these written statements of principles and policies on ethics and conduct, then I believe it is imperative that the minister, in view of that fact and the fact that public funds and other resources are being allocated to these organizations, should require those organizations to develop such statements in a reasonable period of time.

I would also like to suggest that all provincial cultural organizations should be asked to make available copies of these statements of principles and policies on ethics and conduct to interested persons upon request and at a reasonable cost, so that those who might be encouraged to donate artefacts or other materials to the crown, will have confidence in those institutions, and will know their exact policies with regard to the disposition, deaccessioning, or whatever term you wish to give it--that is, the disposal of donated materials.

In conclusion I hope my comments, and the opportunity you have given me to say this before you, are not in any way taken as any lack of confidence in the present leadership at the McMichael gallery. It was with great pleasure and anticipation that I learned of the appointment of Mr. Michael Bell as the new director of the McMichael Canadian Collection. As a person who is aware of his significant contributions to the development of the Agnes Etherington Art Gallery in Kingston, and because of his work at the National Gallery of Canada, I believe the future of the McMichael Canadian Collection is in good hands.

It is important, though, to make sure that the changes that should be made in the McMichael Canadian Collection Act are made, and that Mr. Bell and his staff are given a fresh, clean and strong mandate to bring the collection into the mainstream of professional activity, and the facilities up to the standards that will ensure the proper protection and interpretation of the collection.

It is important for this committee to be bold enough to make such changes to the act and to Bill 175 so that heritage resources of the crown, developed through donation by individuals such as the McMichaels, will not be depleted through neglect. Our cultural heritage is a nonrenewable resource, and deserves the same care as other nonrenewable resources.

Ms. Fish: I will begin by starting at your first issue, Mr. Newlands--I am dealing, of course, with the brief you had originally put in--that is, the issue of the director of a cultural organization not being at the same time a trustee of that organization. You homed in, I think, on what you were suggesting was perhaps a problem; that even with the changes proposed, Mr. McMichael will seem to retain certain staff responsibilities along with being a trustee.

Would I be correct in interpreting this general discussion of the issue, if I were to apply it to this act and to the collection, that you are suggesting someone is either on staff or on the board, but that they ought not to be both at the same time?

Mr. Newlands: I believe there should be, for the sake of the director and for the sake of the board of trustees, a clear demarcation between a person functioning as a trustee and as a staff member in a line position. Otherwise, you have a situation where a person appears to other staff to be meddling or spying on behalf of the board or a board who feels the trustee is biased in his judgement of the board. It is a matter of general principle regarding organizations.

Certainly if I were in that situation, I would decline either being on a staff position or a board position. I would decline one of the functions because you cannot serve both without very many times indicating publicly you have a conflict of interest. We normally assume the director of a gallery is responsible for the conservation, the display, the interpretation of the collection. It is the ongoing day-to-day functions that he is responsible for. If at the same time someone else is responsible for it who is not directly answerable to him, then what is a director to do where there is a legitimate honest disagreement?

Fortunately, because I have other duties, I am not in the position of Mr. Bell and I haven't talked to Mr. Bell about this--it seemed to me it would be fair to say to Mr. Bell that he is the chief executive officer of the gallery, and if anything goes wrong in the day-to-day operation the buck stops there. The board of trustees are responsible to the government and the public as trustees of the public trust, but let us not confuse these issues. Let's make sure that Mr. Bell is responsible for his tasks and the trustees are responsible for theirs.

It appears to me--and as I say my only access to information here is what I read in the press and what I see in the original agreement--that there was some confusion, in hindsight. I am always reminded that hindsight is very easy to come by but in hindsight, there appears to have been by the very means of that agreement built in some question about conflict of interest, whether it occurred or not.

Ms. Fish: I can appreciate where your thoughts may be appropriate to Mr. McMichael's previous position. Part of my concern at the moment is whether you have had an opportunity to review the founder director-emeritus position and whether you feel those duties would lead you to express the view there continues to be the possibility of conflict.

Mr. Newlands: I did receive a copy of a two-page thing that included a job description. It is hard for me to speak about it with any assurance or real credibility. In fact, I wasn't involved in the discussions here. Therefore, I don't know what is involved. I think that many of the tasks suggested here are very appropriate for a founder director-emeritus. I would be concerned--here again, perhaps there is no ground for it--that one of the job descriptions would be involved in deaccessioning.

I think that since our museums have professional collections managers and lawyers and a lot of people involved nowadays in gifts, it would seem to me the in-house professional staff should be able to deal with matters that relate particularly to the legal acquisition and disposition of materials. I am trying to avoid the shoals of acting in either a political role or implying any kind of critical judgement here.

Ms. Fish: No, I appreciate that. I was not seeking to lead you into the political water. What I was trying to say was that it seems to me--I have been inferring from some of the discussion that the October 7 1980 agreement that sets out the job description and duties of the founder director-emeritus appears to have confirmed that Mr. Michael Bell was the chief executive officer and that Mr. McMichael is holding the honorific of director-emeritus rather than discharging any line duties. I was curious as to whether you would have a chance to review that and whether you felt those changes spoke to the concerns that were obviously bothering you about the previous relationship, or whether you felt there was still an area that gave you some trouble.

2:50 p.m.

Mr. Newlands: In general, and as I say, I cannot speak to the specific point, it should be able to work. I say that partly because I have, at a distance, seen Mr. Bell operating and I think he is the kind of man who will make it work. I just hope, as a general principle, any changes in the act will not, in legislation, create any more muddying up of what at best could be said to be muddy waters.

Ms. Fish: Just to pursue that notion of people having staff responsibilities and being on the board of trustees, when I look at issue two and your suggested possible interest groups, you do mention the staff as an interest group that might reasonably be

represented on the board. Is it reasonable for me now to infer that you are not suggesting that a staff member be on the board? Because when I first read your brief, frankly, I thought that is what you were saying and it seemed a bit at conflict with the points you were making in the first issue.

Mr. Newlands: What I am suggesting in the second issue is that staff, yes, should be involved, but at the same time, I would suggest, as has been the case at the Royal Ontario Museum and elsewhere, there are certain issues during which staff should not be present. But as a general principle, the employees of the organization should have some ability, if only to sit as observers, such as, I understand, occurs at ROM, to have some access to that board.

The general principle I am raising is that a concept in Canadian culture of democratization and decentralization only becomes effective when the controlling influences of those organizations are opened up enough for people to actually be able to exercise whatever democratization means. I find a persistent and often unfounded public apprehension about museums, the private clubs and certain groups of individuals, that they are not fully representative of the public. I often find those accusations unfounded, but at the same time, it would seem to me, since this issue is now being raised and this is an opportunity to look at it, a slightly broader board than nine in numbers would not be wrong.

Ms. Fish: Okay. Thank you.

Mr. Chairman: The next person will be Mr. Roy.

Mr. Roy: It is Mr. Newlands, is it?

Mr. Newlands: That is right.

Mr. Roy: Mr. Newlands, I--

Mr. Renwick: Mr. Newlands lives in the great riding of Riverdale.

Ms. Fish: Oh, hear, hear.

Mr. Roy: Does he? I trust you will come to his defence as we embark on certain parts of the brief.

I noticed that at the start of your discussion you took some offence at my colleague, Mr. Conway, mentioning that what you were proposing was in the nature of a homily. I am glad you gave us the dictionary definition, because as one who is restricted in the English language like I am, I did not know what it meant. Now that you have told me, it sounds like one of the definitions of "a pious statement," and frankly, he was not too far wrong. I cannot really argue with most of your suggestions here--your different basic assumption that everyone should be of the highest standards of ethical behaviour, public trust, and all of this. One cannot argue with that approach and with your various issues.

But you will admit, Mr. Newlands, that at the time the gift was originally made by the McMichaels, the government was hardly

geared up and the whole process was in its infancy really. Sometimes when you proceed in this type of uncharted waters, there are, in hindsight, as you say, a lot of areas of conflict. You will admit that at the time this gift, for instance, was made, there were not many guidelines existing for this sort of institution?

Mr. Newlands: The first professional statement of ethics was published in 1920, and there have been a series, in a long history of development, of those kinds of professional guidelines, because, in fact, without a statement of ethics, you do not define a profession. I agree that the government, I think, operated in the best public interest at that time. I have no reason to doubt either the generosity of the gift or the generosity of the government in receiving it.

Looking at it now--and I am trying to avoid, as I said initially, gazing at the past, I am trying to look as much as possible in the future--I personally think there were three gifts involved. There was a very generous gift of the McMichaels to the crown, there was a gift of the crown to the McMichaels, and the largest gift of all was the public underwriting of the cost of running that from 1965 to the present, which was a very, very large gift. So I think there are a lot of gifts involved and I am concerned professionally in looking at the implications of the public gift, the private gift and the crown's gift. There was a tradeoff of interest there.

Mr. Roy: Yes there was, but the thing that initiated the whole process, in fact, was the original gift, the house and the collection. You are aware of the fact that there was no tax benefit emanating from a gift to the province at that time?

Mr. Newlands: Yes. I have not come before this committee to suggest any lack of beneficence or any lack of public spirit at all on behalf of the McMichaels. It was a splendid gift and I think the collection has been able to grow, not only because of Mr. McMichael's work but I think also we are primarily here because of a change in the tax acts which permit it to grow, and all public collections.

If you look at the most recent annual report of the Royal Ontario Museum you will realize how these public collections have grown far more because of tax changes than they had because of individual gifts. That is, the tax laws, which are very complicated, have enabled people, for concessions and writeoffs, to give important heritage. At the same time I think that is only possible because it is in the public sphere. You do not get the same kind of tax writeoff if you give privately as when you give to the crown, so I think the whole climate of giving has changed.

I know for a fact that now museums rely less on the traditional capture-and-chase form of getting collections and are far more likely now to be dealing with tax accountants and lawyers and people who take it very seriously. Therefore I think it is important that in audits of public institutions, for example, the auditing also include all of the collections, the acquisition of assets and the disposition of assets.

Mr. Roy: I do not doubt that, but again I get back to the time that the gift was made and the nature of the gift and the fact that there was no tax benefits accruing to the McMichaels. This may have been the cause of difficulties further down the line with people being director at the same time as trustee and that sort of thing. In retrospect one can argue with the principles that you have elaborated here, but one must have an open mind in looking at the time and the individuals involved in the particular gift.

If I may proceed with my other point, you talk about your issue number one, that the director of a competent organization should not be at the same time a trustee of that organization. Then you go on to say on page four, "The minister should be encouraged to appoint to provincial galleries, museums and related cultural organizations persons to serve as directors, director/curators, superintendents or any other position of chief executive officer, those who have recognized credentials in the relevant academic subject as well as a record of outstanding museum or art gallery professional achievement."

That strikes me, Mr. Newlands, as again the specialist coming out of the university telling the good old country doctor who has 34 years of experience in good hard common sense that possibly he is passè, that what you need now is a type of professional who is professionally trained. I just detect in that--I should not say scorn but some sort of cynicism towards a fellow who has acquired his knowledge and experience through personal experience and hard work.

Mr. Newlands: Actually, my credentials as regard to museums are in the category of professional achievement, and that is, in fact, a recognized category for the country doctor or however you wish to describe it. I in no way imply scorn for that. What I do think is important is that now that this committee has a chance to make recommendations for changes in the act, not that we judge the past, but are setting forward a principle which I think is important underlying any future changes in this. That is, that a director of a major art gallery also must be responsible for the accurate interpretation of that through publications and whatever, literature at the door, and that as a matter of general principle--and I am speaking now for the future--those people should have professional academic achievement.

I do not see how anyone could in any situation recommend--even in the small museums I have been to see, the ones in Pembroke, in Renfrew North, or wherever you go--and I have been to most of them as speaker--the curators in the little country museums are well aware of this, and they want people with academic and/or professional achievement. I think it would be conversely downgrading to suggest that we should not have them.

3 p.m.

The ministry came out with guidelines for community museums which were developed in consultation with those community museums. I do not know how many, but I am sure there were 100-150 meetings between ministry personnel and those museums. The results of those meetings were tabled in the House, I understand, and they clearly

indicated that the small country-doctor museums in this province want people with outstanding professional achievement. I will stand by that with the provision that I am not in any sense trying indirectly or politely to take any potshots at anyone here. I think in the future we must insist on that, whether it be a one-room museum or whether it be the McMichael Canadian Collection. I do not think there should be two grades of citizens in our museum community.

Mr. Roy: I may draw the wrong conclusion but I just sense, underlying your comments and your submission, that a person like McMichael--I do not know, I am not aware of his academic achievements or university degrees or whatever--did not have in your opinion the necessary qualification to be a director or whatever he was at the McMichael gallery.

Mr. Newlands: I have as much knowledge about his professional background as you have.

Mr. Roy: The other point I want to mention to you is your issue number three. Again one cannot quarrel with the fact that you should not have a public institution disposing of goods or other objects, especially institutions that have received public funding, which would leave them open to some suggestion that people are privately benefiting from public funds. I understand that, and I cannot quarrel with it, but again I see underlying that, your suggestion seems to be based on information you read in the press, information that you heard about this morning, which according to Mr. Taylor was questionable, petty, and which he wanted to dissociate himself with. I trust you are not suggesting that there is any solid evidence that this was taking place in this case.

Mr. Newlands: I only have available what the newspapers say. I have not read this morning's newspapers other than the one that is on the chair there, and I do not know about the particular document; I have no insider information whatsoever. There appear to have been some implications in the press, and I do not know how biased or how fair the press is on this matter. I just have no way of assessing it and, therefore, do not propose to take any one view.

I think it is an important principle here. We have an Ontario Heritage Foundation that has rights to accept on behalf of the crown, heritage property. If the Royal Ontario Museum or McMichael have material they cannot dispose of on their own terms, according to their own statement of ethics, then rather than selling it to private individuals or noncharitable bodies, they should offer it to the crown in its other capacity of the foundation, which then will find an appropriate buyer. Because we have the Ontario Heritage Foundation acquiring and preserving important houses and collections on the one hand and we have public institutions on the other hand disposing of them, without them realizing that the small community museum in Renfrew North or in Nickel Belt or in other parts of this province would dearly love to have those materials. I have asked people in small museums whether they would like to have had some things from the McMichael Collection, and I have not found a single one that would say no. It just seems to me that there should be, just like a crown assets disposal corporation, a similar process for heritage property in the province.

Mr. Roy: I cannot argue with you. That would appear to be a far better way of disposing of it than leaving yourself open, attempting to dispose of it privately. You appear to be quite knowledgeable as far as the Ontario Heritage Foundation is concerned. Have you had occasion to look at some of its agreements with other people who have made donations to it?

Mr. Newlands: No, I have no insider information on the heritage foundation. My only dealings are as a public, interested person. I was on a committee responsible for the restoration of a heritage property and was very pleased we were able to raise all the money ourselves and not go to the foundation. But on general principle, I think it is up to you to adjust the heritage foundation if you think it needs adjusting.

Mr. Roy: You are the one who is making a suggestion that the way to proceed with these things is to make an agreement with the Ontario Heritage Foundation. I must admit to you, I haven't seen all its agreements, but I would like to see some of its agreements. For instance, have you seen the agreement it has made with the Firestones in Ottawa?

Mr. Newlands: I would like to see it.

Mr. Roy: We would like to see it too.

Mr. Chairman: We have had reference to the Firestones. I guess Mr. Ryan is here. Perhaps later on when we finish with Mr. Newlands you may want to ask him.

Mr. Conway: Just on that point, Mr. Chairman, I presume, since I made the request, there is a document. I want a copy of the document that contains the agreement between the Ontario Heritage Foundation and the Firestones with respect to their art collection. That is all I want.

Mr. Newlands: Mr. Chairman, I have not come here to speak about the Ontario Heritage Foundation or to justify or explain or criticize its programs. All I have attempted to do is to say that the Ontario Heritage Foundation has a mandate already established by a decision of the House, the Legislature here, to receive on behalf of the crown heritage materials. It seems a perfectly legitimate channel to suggest that material no longer needed at McMichael or at any other provincial institution, if those institutions cannot themselves dispose of it, according to a statement of conduct and ethics, be given to the crown, the other half of the crown, to dispose of it in its perfect way. It is done every day.

Mr. Roy: We are not arguing with that. I am sure you would want us, Mr. Newlands, to be very responsible representatives on your behalf. If there was any suggestion that things were being given to the Ontario Heritage Foundation, maybe we should look at some of the agreements that have been entered into. You will agree that the Ontario Heritage Foundation is using public funds to purchase these assets.

Mr. Newlands: In some cases. I gather in some cases it receives them as gifts on behalf of the crown.

Mr. Roy: Yes, and it is in a position to make agreements that, in fact, turn out to involve public funds because agreements are made involving tax concessions and so on.

Mr. Newlands: I understand there is a distinct advantage in giving to the crown in that you can have a more favourable tax write-off than if you gave directly to an institution.

Mr. Roy: Our only suggestion was that you seem to be suggesting, validly, that gifts should be made to the Ontario Heritage Foundation. I just wanted to know if you were familiar with some of its agreements. You are saying you are not.

Mr. Newlands: I am dealing with the McMichael situation, I am not dealing with the heritage foundation. I think, according to the legislation, as I understand the Ontario Heritage Act, it is an appropriate channel for handling things that were not handled that way, as I understand it from the press, at the McMichael collection.

What I am suggesting is that the reverse happens at present. The heritage foundation gives material to museums on various terms, so they are already established as an intermediary. What I am trying to say very strongly here is that I have not read nor heard of any compelling arguments regarding the normal support of the practice of selling unwanted parts of public art galleries or museums or heritage houses to or through private art dealers.

Mr. Roy: Mr. Newlands, just in closing, I just want to say to you I think this process is evolving, just like government has evolved. Conflict-of-interest guidelines are relatively recent, even in the Ontario government, as recent as, I go back to 1971, when there were things going on that today would be totally unacceptable. But in spite of all these conflicts of interests and these ethical provisions, there are still areas of government that have conflicts, where the ethics again are questionable.

I do not want to be nasty towards the existing government. All I am saying, Mr. Newlands, is you will appreciate that with your principles, however honourable, and I am sure all of us would agree they are something we should strive for, when compared to what happened in the McMichael situation, sometimes it is not a fair comparison to make when you look at the nature of the gift, the time and so on. That is my only comment, Mr. Chairman.

3:10 p.m.

Mr. Chairman: We have Mr. Dean, Mr. Kolyn, Mr. Renwick and Mr. Conway.

Mr. Dean: Thank you, Mr. Chairman. I just have two items I would like to refer to Mr. Newlands briefly. The first follows up what Ms. Fish was saying concerning the possible conflict of a director, or someone who might be considered to be a quasi-director, on the one hand, and a trustee.

You may have noticed, Mr. Newlands, in the amendments recently before us, that the job description of the founder

director-emeritus, as proposed in the agreement of October 7, include what seems to me to be an important phrase; that it would be a responsibility for the founder director-emeritus to "provide counsel and advice on such matters as..." and it goes on to list quite a few.

The fact that it is not saying that this person will have direct responsibility, says to me that there is not a direct conflict there between him as a unique director, on the one hand, and the person who is the actual director of the gallery, on the other hand. How does that fit in with your comments?

Mr. Newlands: I am hesitant to say too much about the agreement, a copy of which I received yesterday, because I wasn't a party, I wasn't involved in the negotiations. It would be presumptuous of me to assume I could stand outside that and anticipate what it means. It seems to me, if that general principle is acknowledged, that there are two different functions and two different lines of responsibilities in the agreement and the people involved, and I think it would work.

Now matter how well you write an agreement, if there is no goodwill it doesn't work. We can't really do much more than that. I am interested in the document--I have to think before I speak too much--and I would have to really read it. But I see nothing there that could not work.

Mr. Dean: Thank you. Mr. Chairman, I commend Mr. Newlands' modesty and hesitation. It doesn't really prevent some of us here from speaking out loud, whether we think beforehand or not. May I ask, through you, Mr. Chairman, if the minister and his staff feel this aspect of the proposed responsibilities of the founder director-emeritus does in fact remove the possibility of conflict that Mr. Newlands has very forcefully brought to our attention?

Hon. Mr. Baetz: I thought because it is an advisory position it is really something different from a staff member having a line function. It is an advisory job. He gives advice when and as called upon to do so. I see that as quite different from a normal staff member with line functions, and quite compatible with the proposal.

Mr. Dean: That is how I see it too, but Mr. Newlands' proposal is so thoughtful and so comprehensive, I wanted to be sure he didn't get the impression we were sort of pooh-poohing his caveat here.

Mr. Newlands: My brief was written prior to my knowledge of it.

Mr Dean: I understand that. It came as a surprise to most of us.

Hon. Mr. Baetz: If I could just add a further comment, Mr. Chairman, this position of founder director-emeritus does of course reflect the government's ongoing commitment to Mr. McMichael to have him continue as an important part of the collection.

Mr. Conway: And, of course in the spirit of the 1965 agreement of partnership.

Mr. Dean: In view of that it would seem to me that the proposed amendment, Mr. Newlands, does take care of some extensive part anyway of your concern in that regard.

The other item was with respect to issue three, the disposal of items from the collection. The provisions of the 1972 act, section 8, which is to be amended by section 2 of the bill that is before us, does have something to say about that; namely that the consent of the donor or their heirs, et cetera, must be received unless there is an agreement to the contrary. Does that grate hard on your sensitive soul?

Mr. Newlands: I am very pleased, as I indicated, in that part of Bill 175. I think it is only right that things which have been donated to the crown are not disposed of without the consent of the donors, or the executors or those people acting on their behalf, as a matter of courtesy if not as an absolute legal requirement in some cases, mainly because gifts are not only gifts of things but involve feelings and other things that come with them. Museum people generally recognize that fact and try, within reason, to consult donors if they are known and if they can be traced. I am pleased to see that section in Bill 175 that specifically makes reference to consulting donors, their executors or people acting on their behalf.

The second part of that concern was to raise the general point that I don't see any compelling reason that things should be sold, or given, to private organizations. I am a member of a number of charitable organizations, and when we get these charitable organization numbers, one of the provisions is that if you see cease to exist, you will give your assets to other charitable groups. That is a generally accepted principle. If you can't use something in your charitable group, you give it, through some reasonable way, or sell or transfer it by some established practice to another charitable group. I am not saying anything revolutionary here. I am just saying what seems to me to be a perfectly good practice.

Mr. Dean: I am wondering if it would be appropriate for this committee to consider recommending, if not through legislation, at least through a strong recommendation to the board of the collection that they might include as a standard clause in any agreement accepting a gift, that upon its being decided it was superfluous or redundant, it be disposed of to the Ontario Heritage Foundation, as Mr. Newlands has suggested. Are there any problems with that?

Mr. Chairman: I don't know whether or not the act could legislate the nature of the contractual arrangement between a donor and a gallery. It is a question, I guess, which would have to be resolved by legal counsel. I can't comment on that.

Hon. Mr. Baetz: I will be pleased to take that suggestion under advisement. I will consult with my legal counsel very quickly.

Mr. Conway: I think legislative (inaudible) since it might be impossible with respect to the bill we have in front of us.

Mr. Chairman: That could be.

Mr. Dean: We could have another one for the next session.

Mr. Conway: I am altogether enthusiastic about the prospect.

Mr. Kolyn: Mr. Newlands, it seems to me that basically what you are saying is that good museums respond to the needs of the public. How in your opinion is the McMichael board and the ministry achieving this at Kleinburg?

Mr. Newlands: In the past?

Mr. Kolyn: In the past, and where it should be going.

Mr. Newlands: My experience with the McMichaels was in taking relatives from England and my children through and as a general visitor. I had no special relationship through which I would have any formal way of assessing it. Therefore my comments can only be based on a general impression of it, but I think it has been an extremely popular and positive one. Though professionals like myself may worry about conservation needs, I think it has tended to be seen as a popular place to go to. I have no particular objections to the general tenor of the place.

I have one reservation which I would say to any organization and that is--the small museums have worked this out, too--the main criterion of success of a museum is not necessarily the number of people who come in the door. It is what happens with those people when they do come in. I often jokingly say, to my wife anyway, that if the only criterion was the number of people who came in the door, then I would suggest the best place to put the McMichael collection in the future would be in the unemployment office because it appears there will be a lot of people there.

It is not only the people who come but what happens to them there. As one of those tourists, one of those visitors, I think it has been basically a very satisfying experience for many people.

3:20 p.m.

Mr. Renwick: I just have a couple of areas that are of interest to me. I am curious about the relationship of collections such as the McMichael Canadian Collection to the public in relation to their accountability. The act provides that the trustees are the members of the corporation, as well as its board of trustees. In other words, the members of the corporation and the trustees are synonymous in their two roles. In a collection such as this--I am not talking about the act in front of us, because I do not think it would permit it--do you think there is any role to be played in the McMichael collection by a membership body of some sort in addition, from among whom the board of trustees, by whatever system, is selected or appointed--and there is every conceivable version of that--do you think public membership is a useful or a valuable public accountability measure?

Mr. Newlands: I would, without hesitation, say yes. I think it is important that all the public institutions have varied levels of involvement and concentric circles of public involvement and interest. Certainly a members committee, or the Friends of the McMichael Gallery, that kind of group which is prepared to keep the director and the trustees informed, the potential donors to help out when it is not possible to get help from other sources, I think would be very valuable. That is why I suggested, in terms of future representation on such a body, that if such a strong membership committee, or Friends of the McMichael Gallery, were to grow, it would be reasonable that the members would have some nominal say on the board of trustees. I think this is the case at the Royal Ontario Museum. It is generally accepted as a favourable thing.

Mr. Renwick: I didn't get that implication in what you said. I thought you were anxious to increase the number of the board of trustees. I can see the merit of that argument, but the further step would be, of course, to open membership up on a wider basis and to provide, by the usual method, for some selection of the board or some stated number of members of the board as representative of the day-to-day membership.

Mr. Newlands: I have not quite worked out my thoughts to that degree of precision. There are any number, and one would want to look at what is happening elsewhere, what works in America or in England and what might work here. So I would not suggest it strongly either way. I think it would be in the public interest that there be a members group and that members group have some nominal representation on the board. Whether it is a set number or how it works, I just can't say at this point.

Mr. Renwick: The other provision in the bill for accountability is with respect to the audit and the annual report. The act provides that: "The accounts and financial transactions of the corporation shall be audited annually by the provincial auditor, and a report of the audit shall be made to the board and to the minister." Then it goes on to provide that "The board shall make a report annually to the minister on the affairs of the corporation, and the minister shall submit the report the Lieutenant Governor in Council and then lay it before the Assembly," which is a standard provision.

Looking at the last annual report, one does not gain any useful information from the notes to the balance sheet with respect to the works of art, which are valued on the balance sheet at \$1. Then there are notes talking about the works of art and whatever the valuations may be, and a description of the special fund, and so on. Apart altogether from dollar amounts of valuations to be included of such items, would you go as far as to say that the annual report or the report of the auditor should report acquisitions and dispositions as well, and the terms and conditions of those acquisitions and dispositions?

Mr. Newlands: I don't know if it needs to be published in such a document that gets wide public reading.

Mr. Renwick: It is pretty safe that it will not get wide publication if it is tabled in the assembly.

Mr. Newlands: What I was trying to establish was that in reading what the press was saying, my first reaction is that the provincial auditors do not audit only the receipts for income and expenditures. Don't they look at the assets, don't they at least pick out something at random and say, "Where is it, do you still have it, how did you acquire it, was it by legal means?" I am not a professional accountant, but it seems to me that auditing means, at least in a spot way, looking at your assets.

I wondered why that had not happened because it was implied, in some of the public things that were coming out anyway, that collections had been bought and sold under terms that were unclear to me. It seemed to me that over the years a provincial audit should have picked that up, rather than letting it build up into a situation where it was unfortunate and, indeed, unkind to the principles involved.

I know this creates other things, but we are into a situation now where most museum acquisitions are done by tax lawyers and accountants. They are used to doing this according to established legal procedures. With that in mind it seemed to me it would not be a difficult thing for the provincial auditors to check randomly, and when finding that certain things had been deaccessioned, to say, "Let's see if the deaccession was according to the rules of the institution," and to have asked for a statement on disposal policy; and if it was not there, to have asked why. It just seems to be a normal function of an audit. I just want to emphasize that that would be a very useful thing in all our institutions.

Mr. Renwick: From your work do you have any knowledge whether or not the Institute of Chartered Accountants has any procedures by which they would carry out such an inventory, or would it be a new field to audit such an inventory? Would it be a new field for them to be required to do that?

Mr. Newlands: I mentioned this issue to a colleague. In writing this brief I was sounding people out, trying to get a consensus in my own mind about what was important. I asked one colleague about this, and he indicated that to his understanding this was a normal practice at the Royal Ontario Museum--when the auditors came in they checked at random on their collections. So it seemed to me that at least at the ROM it was a standard procedure. But this was only in a casual conversation. I was wondering why, from a professional point of view, I had to read about it in the newspaper, whether that report was true or not, and why this had not been handled as a normal process of the provincial audit.

Mr. Renwick: I would certainly be interested at some point to find out what the Institute of Chartered Accountants thought of it. Knowing accountants, I would think they would shudder at the sense that they are somehow or other in their report certifying or commenting upon the existence of the inventory of the Royal Ontario Museum.

Mr. Kolyn: We were just talking about deacquisitions. It says here, "At original cost." Do you know what that really means, and could you explain the process?

Mr. Newlands: I am in no position to defend or define what the gallery has been doing. It is a whole legal area that is outside my competence.

Mr. Kolyn: Could I get somebody else to address that question later on?

Mr. Chairman: I am sure you can, yes.

Mr. Renwick: I tend to take a different view from my colleague Mr. Roy, who takes a pretty pragmatic view of the way in which these conflict of interest provisions develop, and as time goes on, we will get there. I take an entirely more rigid and ancient view that it really is the traditional rules related to trustees that have been well developed in the courts over years. The fact that we do not have statutes dealing with all of them does not mean they do not exist.

That is one of the things that has worried me quite often. I raised it on the George R. Gardiner Museum Act that was passed recently--in the indemnification provision of directors. The answer the minister gave me was that these people are volunteers and that somehow or other that permitted a less rigid standard. I attempted then to express, and I hope some day it will be appreciated, that whether they are volunteers or not is irrelevant to the obligations they have as trustees, whether it is a private trust or a public trust.

I take it that the whole question of ethics is simply an elaboration in a working way of the principles of trusteeship; that you cannot deal with yourself as a trustee for your own benefit, and that you have obligations to disclose. I do not think it is mysterious at all.

3:30 p.m.

Mr. Newlands: I raised this matter also because through our instructional program I understand that institutions like the Royal Ontario Museum do have draft statements which are extremely comprehensive. They have very knowledgeable staff persons who have worked several years just in that area, and it is a very difficult area. You cannot write everything in rules; there are a lot of grey areas. But what they have, when I look at a draft copy as a person interested, I think is a commendable statement.

What I tried in my brief to suggest is that it would be very convenient and useful for the profession, the public and the crown, to be able to have these documents in those institutions. If I come before an institution and want to give a major gift, and I sign a release which says that institution has the right to transfer or do whatever with my gift, I should be able to say, "What is your policy with regard to deaccessioning"; or, "if I give you this material am I in fact giving it to you, or am I giving it to somebody else?"

I therefore suggest that the profession is ready, and I think it is opportune at least in the provincially funded institutions, that such statements of ethics and conduct be in place, approved by

those trustees and developed by those institutions themselves, not being forced on them--developed by those institutions in place, with the people of Ontario knowing that they exist; that they are operative of all who administer that public trust, including the trustees. If I come with a gift I can ask to see it; I can at a reasonable cost buy it if I want to read it; and I have assurance that when I give something and they are taking it, they are in fact taking it and not taking it and selling it.

My point here is that I think it is opportune. I do not think that most museums in this province would argue with that. The whole gist of the development of the profession is in that direction, and this is just an opportune time to underline the importance of that, because as we look in the future, rather than dwelling on the past, it is going to be increasingly important.

Hon. Mr. Baetz: Mr. Chairman, I think it is relevant to indicate at this time that both the Royal Ontario Museum and the Art Gallery of Ontario have adopted the Canadian Art Museum Directors' Organization's code of ethics and are members of that organization. I should also say that all our municipal art galleries have also adopted the code of ethics of the Ontario Association of Art Galleries, so that simply confirms the observations and the hopes expressed by Mr. Newlands.

I should say that it was only in September 1981 that the McMichael Canadian Collection adopted the code of ethics, but I guess they have not yet become a member of the Canadian Art Museum Directors' Organization. I gather that is something that is going to be happening now. They have applied.

Mr. Renwick: I do not pretend to have studied any of them, but I took from what Mr. Bell said this morning that that was purely on an interim basis until they could have something somewhat better; that like all of those documents developed by those associations, they tend to be the lowest common denominator rather than having the highest and best standards that are involved. I take it that the draft that Mr. Newlands is talking about at the Royal Ontario Museum is far more explicit and elaborate.

Mr. Newlands: My personal evaluation of it is that it is probably the best in North America. I mention this here to not in any way take potshots. I mention it because it seems to me that through the Legislature and groups like this, and positive pressure on these provincially funded organizations, you could have these in place so that in fact the organizations can begin to better govern themselves so that we do not have other hearings about the matter. The tradition has been among the AGO, the ROM, and now McMichael, there is a sort of round table. Every year there is someone in the public view. It seems if the legislative arm can help those institutions put in place mechanisms by which they can better govern themselves and not make these kind of public situations, we would all be better off. That is why I raise it, because I think in the legislative arm there is some capacity to see they are in place.

Mr. Renwick: I certainly appreciate the broad issues you have brought before us. I have a certain scepticism about the Ontario Heritage Foundation, because we know even less about that

than we know about the McMichael collection. But subject to that, I think there are a number of areas here that this committee, perhaps without talking about amending a bill, could in reporting the bill usefully make some comments about.

Mr. Conway: Mr. Chairman, I want, first of all, to apologize for being away at the beginning of this afternoon's hearing. Mr. Newlands, your official title is?

Mr. Newlands: I have two titles. I am co-ordinator of the museum studies program at the University of Toronto. My second title is research archaeologist at the Royal Ontario Museum.

Mr. Conway: Fine, thank you very much. I, like Mr. Renwick, very much appreciate your attendance here today and the thoughtfulness and care that obviously went into your brief. I want to deal with a couple of points before really dealing with my most worrisome concern.

I must say, obviously, I think the Auditor General of Canada agrees with you that it is a worry. The poor man tells a tale of trying to chase these inventories and, for those of us with no knowledge of the administrative arrangements, we read that 13-page section of his report with complete wonderment at how all these places function, quite apart from whether valuable art collections are in fire traps, just trying to find out what they have, where it is, what they own, how they got it. Certainly that particular public official shares the scepticism or concern you just evinced in your discussions with Mr. Renwick.

You talk in issue two of the board of trustees and its size. You say: "It should be large enough to represent the many segments of our society. We are interested in the future direction and operation of our province's cultural organizations." Somewhere along the way, we may pick this up in later testimony, somebody has put the thought in my mind that there is no representation from the Kleinburg community on the current board. Apparently, this is a source of some concern now for the community and I know the honourable local member was here. He sits quietly in the back taking a keen interest.

As I understand it, Kleinburg is a small community of about 1,500 or 2,000 people, something in that neighbourhood, and, of course, this gallery in its midst has an enormous impact culturally and economically. I gather there is an interest at the community level in having a representative on the board. I was just thinking, since you raised the subject as your issue two, do you think that would be a worthwhile thing to incorporate in your suggestion? Would you have any difficulty in approving the notion that there be at least one representative of the Kleinburg community, as a community, on the board of that very important--

Mr. Newlands: I specifically suggested this.

Mr. Conway: The other point I wanted to touch on with you, I think you said in your comments earlier that you have an interest in the conservation of art and facilities. One of the things that has always intrigued me, and it intrigues me daily as I

sit in this steambox, is I am reminded that this is an art gallery. I am told by people who run the Legislative Assembly that we have a very valuable collection hanging around here. I am also told, by people who apparently know a lot more about it than I do, that it is a dismal place. If the government and the Legislature wanted to do something to protect art, the first thing it would do is to order every valuable painting out of this building immediately or, failing that, bring this lovely old building up to some kind of standards. Do you have any comment on that?

Mr. Newlands: Perhaps my best comment would be, if you did not object to my taking my coat off at this time, whether it be at Kleinburg, the Bruce County Museum or any of the museums, it is quite clear that the director of those museums is not an expert in conservation. That is a very specialized area for which there are doctoral degrees and all the necessary credentials that are awarded.

3:40 p.m.

I do know in the case of the Bruce County Museum and the Wellington County Museum and elsewhere the director has sought advice from trained conservators, whether from the ministry itself or from the Royal Ontario Museum, which has such a department. In the case of the Bruce County Museum, I understand they asked someone to come and they did a complete survey of the needs.

I would recommend that maybe you might want to ask the Speaker of the House to do a survey of this building. I will tell you if I had paintings in this room, the light level is too high for them. It would probably damage the paintings over a long period of time, or might, and it is not unusual to have these. Yes, I would be concerned about a valuable collection in here.

Mr. Conway: I gather we have done that in the past and that a number of our conservators have warned the Speaker and others that this is a very, very bad building as currently structured to hang anything of any value. I just note that because we are all very anxious to go forward from this place and set a very high standard for others, while our own gallery in our midst, excepting the Woolco collection which hangs in each member's office, is left to the vicissitudes of lighting and humidity factors, which is really quite worrisome.

Mr. Newlands: I can speak specifically. In the past when our students went out they would usually call up the person who was then in charge of the public aspect and they would go out with what are crude or not terribly sophisticated but adequate things, such as a light meter. The light levels on many of the paintings at Kleinburg were far above reasonably acceptable standards and I understand that has been to some extent corrected.

Mr. Conway: Undoubtedly the minister will want to take note of this little conversation and immediately instruct either another conservator or someone to get on with the job of protecting this collection in the public interest as part of our collective public trust.

Mr. Roy: Before you leave that point, I would like to take issue with my colleague, Mr. Conway. I would just as soon see all of those paintings now up on the wall as down in the basement or in some warehouse where they used to be. I must compliment the Speaker, whoever he was, because it is a very recent development that we have had all these paintings on the wall. At one time we didn't have any. They were some place in the basement or the attic or in ministers' offices, I suppose. Now at least the public coming into the building--I take it that there is no more wear on the paintings up on the wall than being down in a basement somewhere.

Mr. Newlands: There are two factors of wear and tear. One is light levels and the other one is what might best be called hot air.

Interjections.

Mr. Roy: There are none in the Legislature.

Mr. Conway: In which case the professional advice might very well be leave them in the attic or the basement.

My final point is the point that I want to spend a little time on with you. I must say when I first read your brief I got as mad as hell. I want to tell you why. I read recommendation one and I read basic assumption one, the underlined portion of the bottom of page two and the top of three, and then issue four. Quite frankly, I don't mind telling you I felt very much as if I was being lectured on the issue of public ethics. I don't blame you for that at all. I am quite happy to engage in it.

I sat back and thought, now what do I know about this whole issue? I suddenly realized in six and a half years in this place I have not been exposed to such sleazy scurrility and innuendo as I have seen in this matter. It is tragic; it is saddening. It is really a terribly unfortunate situation.

Mr. Newlands: Are you speaking about the whole issue or this brief?

Mr. Conway: You sat here this morning while we listened to some of this and I kept thinking, on the one hand, we are getting an injunction from one very highly regarded professional about ethics and, on the other, there is this whole campaign that seems directed--we don't know the origins, although some of us have terrible suspicions--and I am telling you that doesn't point to a very high-flown ethic anywhere. That was the difficulty I had.

Brezhnev signed the Helsinki accords. There are wonderfully marvellous frameworks but they haven't really created the new Jerusalem for peace and international security. It is not a question so much of I hope you will share with me the worry I had, I just hope all the professionals who can nicely pen these marvellous, totally laudable statements of principle and ethics can in all respects live with them. I would be deeply worried if any of these wonderfully well educated professionals were in any way associated with some of the more subterranean aspects of this tragic story that has brought us together in this manner. That is the point I was making.

Mr. Newlands: I can assure you from my contacts with people at the Royal Ontario Museum and the Art Gallery of Ontario, from the directors on down, because they do participate in our program, that there are people who not only promulgate these kinds of statements but who do live by them and manage to live as ordinary people and not as saints. I didn't come to--I made some comments about homilies in the beginning particularly as you raised the word--

Mr. Conway: Fair enough.

Mr. Newlands: --in the first part of the day. I didn't come to give a sermon but I think at the same time someone might have raised in their mind, "We are hearing all this issue, but where is the profession? We hear lawyers for both sides. Isn't there a museum profession out there?" It seemed to me that in view of what I heard there was no one speaking up as a person involved in museums, it would have been the fault of the profession not to have said some of these things. So I am in an awkward situation.

I am not trying to lecture or moralize or to give sermons for the edification of hearers or a tedious moralizing discourse, I am here to try to say that in the midst of this whole issue, there had developed very noticeably and very strongly a middle road which is called a profession which has defined legitimate, reasonable grounds for its own operation and that to the extent such a legislative group can bring its influence to bear to make that a standard basis of operation and can help that become accepted where it is not accepted, I think it is a very laudable thing.

We need these institutions to be self-governing but according to generally accepted practice. It seems to me to be the legislative function to help define what is generally accepted practice.

Mr. Conway: That is perfectly in order for you and I commend you for having come today to speak to that. I don't in any way fault you for that. But I wanted to share with you the position which I found myself. Quite frankly, my limited experience with the arts community has left me a little more depressed than I want to be about some of these matters. I often use the analogy that many is the day I sat in a university classroom and listened to a great and eloquent lecture by some professional political scientist and went that night to a senate meeting and saw politics, the like and ferocity of which I have never seen in this place, with more blood on the floor than I could ever have imagined. I just hope the promise, the principle, the practice and the performance happily marry in the public interest for all concerned. That was really the little homily I wanted to give.

Mr. Chairman: If there are no further questions or comments, I would like to thank Mr. David Newlands for both his brief and presentation before the committee.

Mr. Renwick: And for his patience.

Mr. Chairman: And for his patience, definitely. The next witness is Mr. MacEachern, the representative of the Kleinburg and Area Merchants and Tourism Association. Would you like to make introductory remarks or proceed with questioning by the committee?

Mr. MacEachern: I would like to make some introductory remarks.

On behalf of the Kleinburg and Area Merchants and Tourism Association, we appreciate this opportunity to be able to present our concerns, beliefs and requests before this committee. I wish to thank Mr. Newlands for being the first person who has shown any concern for the village of Kleinburg.

Twenty some odd years ago, Kleinburg was a sleepy little Ontario hamlet which few people in Toronto had heard of, let alone in Ontario, Canada or the world. Amongst its residents were a man and a woman who had purchased a wheat field and a ravine lot to sow their dream and we all know how that seed has been nurtured and has grown into a national treasure. With that growth came the growth of the village of Kleinburg and the supporting tourist-oriented businesses.

3:50 p.m.

As the McMichael Canadian Collection grew in size and attendance, so too did the businesses grow in size and employment along with it. The people of Kleinburg, proud of the village's unique character and historical setting, rejected plans of mass urbanization a few years ago, yet welcomed hundreds of thousands of school children and tourists each year. Through Mr. McMichael and his staff, over the years a fine rapport with the business community was established. They promoted each other to the point where it was almost a symbiotic relationship.

In a village of 1,200 people and roughly a dozen small businesses, we feel that an institution which draws close to 300,000 people annually should have a responsibility to the village, whether it be legal, moral or social. We take great exception to Mr. Allyn Taylor's comment in his letter of August 12 stating, and I quote, "We must state at this juncture that the board firmly believes that neither morally or legally are the merchants entitled to any payment whatsoever for the collection closing." This statement reflects the board's overall attitude that it basically could not care less about the town.

Another excellent example of this attitude was that we were given only two weeks' notice that the gallery would be closed for two years. I must admit it was myself and my association that called the press in, and perhaps that is why we are here today. If what I hear is correct, that Mr. Taylor and the board would like their responsibilities more clearly defined, then I suggest that the new legislation be amended to show that the board has a very real responsibility to the village of Kleinburg.

The Ministry of Industry and Tourism engaged the firm of Touche Ross to do a study on the effects of closure of the gallery. Sales have dropped up to 75 per cent in some businesses and there have been employees laid off, voluntary wage cuts, and even philosophical changes in the businesses. On page five the report states, "Plans to reopen the gallery are not formalized and the present strategy is somewhat reactive." We were told it was going to be opened on June 15. Page two of the report states, "A closure

of an uncertain duration will be difficult to manage." We respectfully request government guarantees of any bank loans, should they be required by any particular individual business, until such time as the gallery is fully operational. If what we read in the Touche Ross report is correct, we cannot possibly plan or effectively manage when we do not know when the gallery is going to reopen.

The Honourable Reuben Batez promised us this past summer that he would suggest to the board that there be set up a liaison committee between the board and the business community, but to date, six months later, this has not been done. Board minutes have not been forthcoming, even though the Attorney General's office advises us that this is a public board and the public has a right to know. Regardless of the rhetoric and buck-passing we heard yesterday between the minister and the chairman, the people of Ontario have a right to the minutes of this public board.

We feel the gallery has such an impact on the local community that we respectfully request that a local businessman have a seat on the board. We are prepared to submit a list of names of persons and their qualifications to the Premier, one of whom he may select and appoint to the board, and that the act be amended to show that at least one local businessman shall sit on the board at all times. Presently we have a board and an administrator of total outsiders influencing our livelihoods. The speed at which the gallery reopens and the fairness as to how it reopens is of utmost importance to the survival of our businesses.

We were told by the deputy minister, Mr. Ward Cornell, that the expanded gift shop and restaurant were only recommendations by the consultants and would not be acted upon unless there were moneys left over from doing the essential renovations, and only then would moneys be expended on these items. At the last count I heard, they were almost \$1 million over budget, and what is opening first? A fully licensed restaurant with a dining lounge licence. The hearing is next Tuesday at the Liquor Licence Board of Ontario offices. There is also an expanded gift shop almost double in size.

On top of all this, they are cutting back on humidity control systems, which was one of the main reasons for renovating. I now understand that moneys earned from these retail outlets are not to go to a special fund to buy objects of art any more, as was their original purpose in the 1972 act, but just to go to a general fund. So why do you have them at all?

We do not believe that the Ontario government should be in business to compete with small business, particularly competing with businesses it has already successfully suppressed. We do not believe it was the intention of the McMichaels to get into the retail business, nor the dining lounge business, on a large scale, nor did the act suggest that this be the case, but merely to supply a limited service to its visitors. We believe this is a similar philosophy to that of most nationally acclaimed art galleries around the world.

To show the lack of community involvement, or should I say the total cloud of secrecy under which the current administration is working, we were assured by the minister that the gallery would remain open until Thanksgiving weekend. In fact, the gallery started to shut down in the middle of August, and by Thanksgiving weekend only two per cent of the art was left hanging for visitors to see.

We also noted with interest that last fall, when the gallery was closed, the snack shack--a log building--was instantly transformed into a licensed dining room, called the Pine Cottage Cafe and Gift Shop, purportedly to grab any business they could, I suppose. It was well noted that they opened without meeting the basic fire marshal's code for licensed establishments, such as fire exit signs. This is an obvious case of one law for the government and a different law for the private sector.

With all the talk of fire safety I have heard in this room in the last couple of days, it clearly points out to me that the present board, the present administrator and the various architects in the ministry, do not give a damn about fire protection. This restaurant was opened just two to three months ago. We believe that in all government press releases and media advertising of the reopening of the gallery, the village business should be given equal time and space; that a representative of our association work with the agency involved in promoting the village and the gallery; and that this co-ordination be started immediately.

The present administration, and a public relations firm, told the clerk of this committee that there were not any local newspapers in the area in which to advertise these hearings today. In fact, there are six such newspapers. As a result, the submission date had to be extended one week to allow local interested parties to respond. We believe we can be of assistance to the gallery in this area.

In two other areas of concern to the public, not just to the Kleinburg and Area Merchants and Tourism Association, over the months we have been trying to get answers. In various meetings some things have come up. It is a fact that the consultants somehow mysteriously became appointed as architects. When I asked Mr. Sears if he was comfortable with this arrangement, he said yes. Comfortable? I guess he is comfortable--\$1 million over budget and the meter is still ticking. I would call that downright cosy.

Michael Bell told me that he was the only candidate for the job of director who was given a copy of the Klein and Sears report prior to his interview. Is that fair competition for a position like that? He admitted that in front of a meeting with the minister.

Ladies and gentlemen, I have been depicted, I suppose, as a greedy businessman with only my own self-interest at heart. Let me tell you that I grew up in the village of Kleinburg, long before Tapawingo was built. I met Mr. and Mrs. McMichael when I was not much taller than this desk. I have influenced a family member to give an important Lawren Harris to the gallery. I hate to say it, but I at times regret that decision. Yet, the minister has had the gall to blame me in front of the press for cost overruns.

I have never seen such a huge smear campaign by a government against such a great benefactor. To me, as a person, it is absolutely shocking. All sorts of things we have heard this morning, including even leaks to the press. We could not even get a copy of the Klein and Sears report on numerous requests, and yet it was right out in the papers weeks before. I have never seen such a massive coverup. I do not know if anybody has seen board minutes. When I see a coverup like this I begin to worry. Even the Ombudsman's office has been stalled at ever corner--you can call them as witnesses.

4 p.m.

There are things that happened yesterday that I do not like. I do not like eleventh-hour deals. It is just really sleazy. I do not know what precipitated it all, or anything like that. I take exception when the minister says they agree that the McMichaels are entitled for life to access to the galleries and library of the collection when the galleries are open to the public. That must have been a tough bargaining point. "Gee, Allyn, I would really like to see the collection." "Well, Bob, I guess we can't keep you out when the gallery is open. Yeah, okay." Why did they have that in writing? I do not know, but something is funny.

I heard people here talking about bringing Mr. McMichael to these hearings yesterday. I suggest, respectfully, that if you bring Mr. McMichael to these hearings, then perhaps you should bring Mr. Roberts, who is the architect of this partnership, as well.

In conclusion, what we in Kleinburg would like to see is total involvement with the community as there was in the past, only now a little more so, because we are not dealing with people we know. Therefore we would like a seat on the board. We would like communication and input into advertising of the reopening of the gallery, and that should start immediately. To see us through until the gallery reopens, whenever that might be, there are some businesses that may require guarantees at their banks; otherwise there are going to be foreclosures. Thank you.

Mr. Lane: You did not overemphasize the fact, but it seems to me that part of your disenchantment with the whole thing is the lack of business in your own community. I am a small-town man myself and I know how you feel about the greatest attraction in your community being suddenly taken from you. Do you have any idea in dollars and cents what the merchants in that area might have lost because of the closure of this particular gallery?

Mr. MacEachern: I cannot speak for any of the other businesses, but for my own I can say that for the first six weeks of closure, our gross sales dropped \$100,000.

An hon. member: What kind of business are you in?

Mr. MacEachern: I am in the restaurant business.

Mr. Lane: So the people who came to visit the gallery did leave a lot of money in town?

Mr. MacEachern: Oh, yes. I think Touche Ross talked of the bus tours. There were two bus tours a day.

Mr. Lane: This was the greatest attraction you had in your town.

Mr. MacEachern: The largest attraction, of course, is the gallery. The town itself is also unique. Some people like to come up and look at the streets and visit the shops. They sort of combine together.

Mr. Lane: So the fact that they came to see the gallery gave them a chance to see what else you had to offer as well.

Mr. MacEachern: Yes.

Mr. Lane: So I assume that really is a pretty sore point with yourself and other businessmen in town.

Mr. MacEachern: Yes.

Mr. Lane: Thank you very much. I am always interested in the small-town aspect. I know what would happen in our small town if our museum closed because it brings in hundreds of thousands of people.

Mr. Conway: I apologize, Mr. Chairman, but I didn't pick that up. In response to Mr. Lane's question, how much did you say you lost?

Mr. MacEachern: Since the closing of the gallery, in the first six weeks, over \$100,000 down from last year.

Mr. Pollock: I am a little concerned about your views on fire protection. Did you as a merchants' association make your views known to the board that there was inadequate fire protection there over the years?

Mr. MacEachern: For the gallery?

Mr. Pollock: Yes.

Mr. MacEachern: No, I was not aware that there was a problem of fire protection.

Mr. Pollock: I understood you just said that there was a real problem with fire protection there.

Mr. MacEachern: I am talking about how they opened a restaurant on the grounds after they closed. They opened that restaurant without meeting the current fire marshal's code.

Mr. Pollock: But there is a problem with fire protection at the gallery, too.

Mr. MacEachern: We have never said that the gallery should not be upgraded or whatever it needs to meet the code.

Mr. Pollock: I agree with one comment you made. I believe you criticized Mr. Taylor. I was a little disappointed in one of his comments because I was a volunteer fireman for 17 years. He made the comment that the art collection should be protected, and then the general public. Maybe that was a slip of the tongue. It should be the other way; the general public should be protected long before any art. That is my view on that particular situation. However, I have been in the gallery and there certainly is a lack of fire protection in it.

Mr. MacEachern: We have never said that the building should not be put up to code. We have all agreed 100 per cent, and I have made it known to the minister, that protection of the public and protection of the art is utmost.

Mr. Pollock: That is the right perspective as far as I am concerned. The public comes before the art.

Mr. Kennedy: As a supplementary, are you saying your drop in revenue is partly because the gallery opened a restaurant, and partly because the gallery was closed down? Is it a combination of those two things?

Mr. MacEachern: I do not think the little snack shop they have open now has really affected my business. I would say that the closure of the gallery is the major one that has affected it.

Mr. Kennedy: Which had to take place if the renovations were to be done, and remedial measures.

Mr. MacEachern: We always felt that it could be done in stages. In fact, we paid for a report by a fire protection engineer who said that the most the gallery had to be closed down for was two months. This was an independent study which we commissioned and paid for ourselves to prove a point. I have talked to a lot of architects, and they said there is barely a building in this world that cannot be done in stages. We always felt it could be done in stages so that people would still come.

Mr. Kolyn: Supplementary: In your opening remarks you alluded to Mr. and Mrs. McMichael as residents of the village of Kleinburg, and then when you got down to it a little later on, you said something to the effect, "Now we have a board of total outsiders." Do you not consider Mr. and Mrs. McMichael as residents of Kleinburg, and that they have been for years? And being part of the board, are they not part of the community?

Mr. MacEachern: At present Mr. and Mrs. McMichael are living at Islington Avenue and 401, with no assurances that they are coming back to Kleinburg.

Mr. Kolyn: Certainly there are assurances--as soon as the reconstruction is done. That has all been documented. I am quite sure that you know they will be coming back.

Mr. MacEachern: Hopefully.

Mr. Kolyn: Oh, certainly.

Mr. Renwick: I have a couple of questions I would like to ask, but I am surprised that the minister has not wanted to respond. There were some serious allegations made in the remarks to the committee.

Hon. Mr. Baetz: There were so many allegations made, I do not know where to start.

Mr. Renwick: There were not all that many, Mr. Minister, but the ones that were made were of extreme seriousness.

Hon. Mr. Baetz: I will start with the eleventh hour, sleazy deal which you do not like. This is an allegation made here that somehow the government, or somebody here, was engaged in making an eleventh hour, sleazy deal. I think that Mr. MacEachern should know that the so-called deal--and I do not regard it as a deal--was initiated by Mr. and Mrs. McMichael through their counsel, in fact, in a letter directly sent by Mr. McMichael to the Premier, where it was suggested that they would like to discuss first with the Premier--and the Premier's suggestion was the chairman of the board; I think correctly so--to see if they can iron out their differences.

I would not accept your judgement that this is a sleazy deal, and I think you should know that, in fact, it was initiated purely and simply by Mr. and Mrs. McMichael.

4:10 p.m.

Mr. MacEachern: I think the fact of these hearings, the innuendos and the smears in the press, perhaps forced Mr. McMichael, in his state of health, to worry about appearing at these hearings.

Hon. Mr. Baetz: On your comments about the Ombudsman's office stalling, I must say I don't know what that reference is all about. I understand you have contacted the Ombudsman's office. I don't know what steps the Ombudsman has taken in response to your application or to your request for some consideration.

When you talk about a smear campaign, the smear campaign that was alluded to this morning, I thought we had made it very clear that I was not involved in that and that the chairman of the board was not involved in that smear campaign. I must say I deeply resent your saying that. I think when you make comments like that you should prove your accusations.

Mr. Chairman: If I may interfere, I don't think the witness has in any way accused either the chairman of the board or the ministry of a smear campaign.

Hon. Mr. Baetz: I think Hansard will show he referred to the minister. I may be mistaken.

Mr. Roy: He may have referred, as I recall, to the ministry. Of course, you are not in a position to refute that, because you caused no investigation to take place. We don't know. It may be.

Mr. Chairman: Anyway, I don't recall any direct accusation of the minister.

Mr. MacEachern: It wasn't a direct accusation of the minister, but the buck has to stop somewhere. If a guest in my restaurant doesn't like his steak, I can't say, "It is not my fault, it's the cook's."

Mr. Roy: Is that the plaque you have on your desk, "The buck stops here"?

Hon. Mr. Baetz: You made some comments about the fully licensed restaurant and I think we should refer this to the gallery itself. My impression is that restaurant has been there for some time. In fact, it was initiated and organized by Mr. McMichael. That is something we wish to refer to the collection direction. The closing time Thanksgiving weekend, again, we should hear from Mr. Michael Bell to see what the staged closedown really meant. As to the advertising, you have suggested that in future the advertising for the reopening of the gallery should include advertising relating to the Kleinburg restaurant and tourist businesses. I see no great problem in that. That is something we can initiate. You referred to the consultants appointed as architects and then engaged to carry through the program. That is a very important point. I think Mr. Michael Noon should be called upon to speak to that.

Mr. Noon: Mr. Chairman, in terms of the issue of the selection of the architects not being appropriate, I would like to reaffirm that the selection of the architects was done in proper due course in accordance with other government practice. I might go back in time to the selection of the consultants to do the feasibility study who happen to be the same consultants now doing the architectural work. That is true. At the time the board decided to undertake a feasibility study it asked the ministry for some advice on the type of consultant from whom it might ask proposals. As you probably know, right now the ministry is heavily involved in a program of subsidizing planning studies and feasibility studies. We have probably dealt with 200 different planning studies. We have built up quite an expertise in terms of the numbers of architectural or other consultants who have experience in studies and produced publications.

We gave the board a list of eight firms from whom they might elicit proposals. Of those firms seven submitted proposals. They included Klein and Sears, Trevor Garwood-Jones, Louis K. Fleming, Moriyama and Teshima--I won't go through the whole list. However, a selection was made for Klein and Sears to undertake the feasibility study. When the feasibility study findings were made known and the board agreed it should proceed with work on the building to correct the deficiencies, the board then invited proposals from four firms of architects to actually submit proposals for undertaking the work.

That list was drawn up by the task force, which included myself and other staff of the ministry, the chairman, the vice-chairman and the McMichaels. They included Klein and Sears, Leo Venchiarutti, who had undertaken the original design of the building, Trevor Garwood-Jones and Leslie Rebanks. Leslie Rebanks

and Leo Venchiarutti were suggested by Mr. McMichael and agreed to by the task force. Obviously the ministry felt Klein and Sears had already done a tremendous amount of background work in dealing with the fire authorities, the Ontario fire marshal, and the fire department. They certainly were very familiar with the building. The firm of Trevor Garwood-Jones was suggested, because he had experience in designing the Hamilton art gallery and other art gallery projects.

The board eventually received three submissions from architects, one from Klein and Sears, one from Leslie Rebanks and one from Trevor Garwood-Jones in conjunction with Leo Venchiarutti. It had not been made known to the board prior to the submission of the proposals and the interviews with the firms that, in fact, Mr. Venchiarutti and Mr. Garwood Jones were making a joint proposal.

In hearing the proposals from the architects, the chairman felt that this somehow prejudiced the selection in that it narrowed down the field of selection. Instead of four proposals we now only had three. The board voted on the selection of the architects--I don't now recall the numbers, but it is recorded in the minutes of the board--and Klein and Sears were awarded the project. That is how the architects were selected.

Mr. Roy: What you are saying is basically the same people who made this report and pointed out the deficiencies were subsequently awarded the contract by the board to correct the deficiencies. Is that what you are saying?

Mr. Noon: Yes. That is not unusual. It has happened before that architects have undertaken feasibility studies and then in competition been selected to carry out the work.

Mr. Roy: That may be but we just heard, in the brief prior to this one, about ethics and conflict of interest and all of that, and here we are. I just find it strange. I am not versed in what the procedure is, what is acceptable to the profession. I just find it interesting that the same people who point out the deficiencies in a report are then the ones who are selected to correct the deficiencies. With the general public that could raise some questions. I think you understand that.

4:20 p.m.

Mr. Noon: Yes, I understand that. I would also point out that the feasibility study that reported the deficiencies was primarily reporting on the requirements of other authorities such as the building department, the fire department and the Ontario fire marshal. These were fairly stipulative requirements. I saw no problem, since the due process had been gone through in selection of these firms, being a member of that profession myself and seeing it was done in accordance with government practice.

Mr. Roy: You are talking here about the correction of a problem involving a contract worth how much? Just give me a ballpark figure. What is that contract worth?

Mr. Noon: At this point in time, about \$5.8 million.

Mr. Roy: The architectural fee is based on a percentage of that?

Mr. Noon: Yes.

Mr. Roy: What is that generally?

Mr. Noon: I am sorry, I would have to ask Brian the percentage. It is a sliding scale. It varies according to the magnitude and scope of work. About eight per cent.

Mr. Roy: In my amateurish arithmetic that quickly sounds like close to half a million, \$400,000. It is a very lucrative proposition. I mean they were paid separately from that for the feasibility study. That was paid on what percentage? On an hourly basis?

Mr. Noon: No, that was based on an upset fee. The cost of the feasibility study was approximately \$30,000.

Mr. Renwick: (Inaudible)

Mr. Noon: The contract to do the feasibility study? No, the contract to do the work, which is now being carried out and is being done in stages. It is not a cost plus contract. Packages of work are being tendered separately for a fixed fee. By the way, the architectural fee is not purely for the architects. It does cover all the other consultants, structural, mechanical, electrical, and any other specialists who are brought in.

Mr. Kennedy: Can I ask first, Mr. Noon, what about this business that it possibly could have been staged in a different fashion than is being done? I was a visitor there when the members were invited to go up and it seemed to me that the hazards were almost equal throughout the whole building and the need for fire protection was as great in one spot as in another. Can you enlighten us on that?

Mr. Noon: The original concept was that the work would proceed in stages, because I think everyone was aware of the desirability of keeping the gallery open as much as possible. I think it became clear to the board that there would be hazards in keeping the building open. The question of closing it totally obviously would have been the most effective and probably the least costly means of carrying out the work without hazard to the public and to the collection and to the building. That was the decision originally the board did take, but it was obviously under local pressure to keep the building open. Totally closing, it could be done, but closing it in stages is being done now. It is a little bit more hazardous to keep parts of the building open to the public.

Mr. Kennedy: So after consideration, the decision was made as we see it right now.

Mr. Noon: Yes, to close the building for a period of time and reopen the first completed phase. Mr. MacEachern referred to the licensed restaurant. It so happens that is in the lower level of the great hall, which is the first phase to be completed. I do not think there has been any intention that because the restaurant is there, that that is the primary focus.

Mr. Kennedy: Mr. MacEachern, you mentioned you and the merchants' association had commissioned a study.

Mr. Chairman: If I could interrupt, we are at the stage of a minister's response requested by a member of the committee and I do not think we should be questioning at this time until that response is completed by the witness.

Mr. Conway: I just want to make a point in response to my good friend from Mississauga South because he has just said something that I think is really relevant. I am not going to keep the minister. The rigorous, thorough-going common sense of my good friend from Mississauga has always impressed me and I thought I just heard him say to our architect friend, Mr. Noon, that on his visitation to the gallery he was impressed by the fact that there seemed to be fire hazards that were all over the place. I defer entirely to the member for Mississauga South. What I do not understand is how did a solid layman see these things and report and conclude accordingly when all these experts, all these architects and all these other people, are wandering through the same building and this revelation does not visit itself upon them.

Mr. Kennedy: They do it because they went out specifically to see them.

Mr. Conway: I just wanted to underscore the very excellent comment of the member for Mississauga South.

Mr. Kennedy: Don't get carried away.

Hon. Mr. Baetz: Shouldn't Mr. Newlands respond to that. I think there was a very good reason why it was done, not in the staged closedown but the way it is being done now. Perhaps Mr. Conway was not entirely persuaded that the present way of doing it is the best and the only way.

Mr. Conway: My comment was simply to note the observation of the member for Mississauga South who told us moments ago that on his visitation to the gallery he was rather impressed by the number of fire hazards that seemed to be scattered around the building. We have had a couple of architects who work for the ministry tell us that they visited the place and it was all quite a mystery to them. They did not see what Mr. Kennedy has just pronounced he saw.

Mr. Noon: If I may correct that, we did not visit it and it was no mystery to us prior to it being drawn to our attention. As I said earlier, it is not our function to go around inspecting all of these buildings and policing them, even with a cursory glance. There are local authorities there to do that.

Ms. Fish: I thought the visit my colleague Mr. Kennedy was referring to was indeed a visit specifically to tour the building--to have shared with members the problems in the present construction, notably fire safety hazards. The visit was indeed a tour that pointed those aspects out to the members there specifically as distinct from being a casual visit by a layman wherein the layman was able to identify a number of things that a professional was not. I wonder if you could enlighten us on that as to whether that was indeed the case.

Interjections.

Mr. Chairman: --you have to wait until the minister's response.

Ms. Fish: Could we understand this point of procedure, Mr. Chairman. It is a little bit difficult, it seems to me, for the minister to answer questions that have been put, or other people might come forward, and then at the same time to be trying to maintain a thread of questions that we might put to Mr. MacEachern. I am just wondering if we could have some sense as to where we might go and whether it might not be possible to be pursuing some discussions with Mr. MacEachern on the things he has raised here so we might clarify his points of concern and then move in to--

Mr. Chairman: Normally, we question a witness. Mr. Renwick was intrigued by some of the comments and asked the minister to reply.

Mr. Renwick: All I want to do is to hear what the minister has to say about the allegations.

Ms. Fish: Then maybe we could stand down some of the detailed questioning of the minister and his response and enable further questioning.

Mr. Renwick: I am not going to give up my right to question the minister, detailed or not.

Mr. Chairman: The minister has not completed his response and I would like the minister to complete that.

Hon. Mr. Baetz: I am assuming, Mr. Chairman, that you are moving off then from the subject of the consultants appointed.

4:30 p.m.

Interjections.

Hon. Mr. Baetz: The way I have them here, the next one has to do with the Thanksgiving weekend closedown. We certainly had tried to close the gallery down. These were the instructions to the gallery itself that they close down during a period of time when it would be least disruptive to the business community. As you know, Mr. MacEachern, we talked about the Thanksgiving weekend and then beginning openings in June, which we felt was as tight a schedule as we could possibly achieve. You have indicated that the place was

largely closed really before Thanksgiving weekend, and I think Michael Bell would be the man who could report to the committee in the most precise way as to what was the actual scheduled closedown.

Can I ask, Mr. Chairman, if Michael Bell took the--?

Ms. Fish: My concern is for the witnesses sitting here who have raised a series of points. There are some things which I think are useful to clarify.

Mr. MacEachern: We were of the impression that the gallery would remain open until Thanksgiving weekend, which is the largest weekend in Kleinburg. People come out to see the leaves, the gallery, et cetera. We feel it was very unfair that it started closing as of August and that only two per cent of the works of art were left in the gallery on Thanksgiving weekend. You should have heard the people in town who came out to see the gallery on its last weekend. "Gee, there is nothing here." There were people who have visited from across Canada to see the gallery in its last state as they had known it on Thanksgiving weekend, and it was closed down except for two per cent of the art. That is my only point.

Interjections.

Mr. Chairman: Is Mr. Michael Bell here to assist the minister in his reply?

Mr. Bell: There are a number of points that have been raised and I was not really taking any precise notes. But we can go back to the first, and which, I think, is the seminal issue, and that is the decision of the board to close the gallery on the basis that the eighth month closing would (inaudible) reopening. The material was presented to the board at the time to set up the various options, and if I recall correctly, the option chosen by the board was option B. Option B described a process whereby the building would be closed for eight months and would reopen on a phased basis.

One of the ways this would be possible, taking into consideration the continued risk that the board was incurring by keeping it open, would be to gradually, in an orderly way, withdraw the works of art from the upper level of the building and pack those carefully for disposition to another site for storage. At the same time, we felt that it was a wise decision because that would reduce the number of people who would be on the upper level, which is the level which is most at risk, I guess is the best way to put it. It was a very sensible course of action for the trustees to take. That packing exercise on the upper level went on until just before Thanksgiving.

Some members will recall that the Kortright Centre for Conservation exhibition opened in advance of Thanksgiving in order to provide some kind of continuity and public display of the collection in the Kleinburg area. A percentage was mentioned--two per cent. If that were the case, that would be a rather extraordinary collection. If I recall correctly, there were

something like 600 works still on the wall or in cases, if we count the Inuit and Woodland sculpture material on the day of August 10, when there was a bit of a scene at the collection gallery when the local representatives--Mr. MacEachern, I think, was there--and the television cameras, I would say, created some degree of confusion as we were trying to remove from the building some of the equipment required for the College Park display which was opening the next week.

Are there any more particular points I should rise to the occasion on?

Mr. Conway: The minister may touch upon it. One of the allegations made by Mr. MacEachern does concern you directly, Mr. Bell, and maybe you would want to comment on it. It was, I think, alleged by Mr. MacEachern that you indicated to him that you were the only applicant for the position who had seen the Klein and Sears report. Have I clearly represented what you said, Mr. MacEachern? I think you probably heard it, Mr. Bell, sitting in the audience. Have you any comment on that by way of either its truth or falsity, and if it is the former by way of explanation?

Mr. Chairman: First of all, let us establish, have you completed your response, Mr. Minister?

Hon. Mr. Baetz: I think I have, certainly for the time being.

Mr. Renwick: I am getting confused. If the minister has not completed his response to the allegations we are getting sidetracked and that, of course, lets the minister off the hook.

Mr. Bell: I am sorry, Mr. Renwick, I apologize.

Mr. Renwick: While we have Mr. Bell there, I would like to ask a question of Mr. Bell, as surrogate for the minister. Was there any agreement or understanding between the board or any representative of the board and the business community of Kleinburg which Mr. MacEachern represents with respect to the closing of the gallery prior to the Thanksgiving closing?

Mr. Bell: When the option of working with the eight-month closing was dealt with, it was dealt with quite openly in terms of trying to reduce the risk, at the same time keeping the building open. It was certainly in my mind an important consideration to find an opportunity for us to proceed in an orderly way to remove a lot of those irreplaceable things from that second floor and make sure that--

Mr. Renwick: I can well understand that from the point of view of the phased shutdown, that that may have been an orderly procedure. I asked you whether or not, from your discussions or whoever had discussions with the business community, could the business community have reasonably anticipated that something called the shutdown would be on Thanksgiving day, and did you take that into account, or did the board take it into account?

Mr. Bell: I do not know of any precise agreement.

Mr. Renwick: I can understand that.

Mr. Bell: I think that there was an attempt by the trustees to accommodate the interests that were being presented to them. My position in the thing, along with the advisers that we had, was to try to find a solution to the problem. I can recall speaking to Mr. MacEachern on the day that they spoke to the press, I think, the first time. I said, "John, I guess from what you are saying any amount of time that we can cut off the length of closing would be really very useful." He said, "Yes." I said, "Well, we will try."

Mr. Renwick: My next question, in trying to tidy this up, concerns the Ombudsman whom we seem to have passed by somehow or other in this business. Did you have any inquiries made of you by the office of the Ombudsman or, to your knowledge, has the board had any inquiries made by the office of the Ombudsman?

Mr. Bell: Yes. I thought it was complete.

Mr. Renwick: In your sense, have you answered all the questions that you were asked?

4:40 p.m.

Mr. Bell: Yes. We have had no further inquiries.

Mr. Renwick: And you, Mr. Minister? Have you been asked any questions by the Ombudsman?

Hon. Mr. Baetz: Yes, my deputy has been working on this.

Mr. Cornell: I had a letter from the Ombudsman asking some questions and within two weeks of receipt of that letter, I responded to it and I have not heard anything from him since nor have I had any indication from the Ombudsman that he hasn't had the full co-operation of anyone, and everyone. The normal practice is, if he is having trouble getting information or support or whatever, he invariably calls. We have no problem.

Mr. Renwick: Perhaps if we could clear up Mr. Conway's question, then we could come back to the minister.

Mr. Conway: I apologize for the intervention there.

Mr. Renwick: You don't need to apologize. I just don't want the minister to think that some way or other we would not get to the restaurant.

Interjections.

Mr. Chairman: If there are no further questions to Mr. Bell--

Mr. Renwick: There is a question to Mr. Bell concerning prior knowledge, being the only candidate for the position to have prior knowledge of the report.

Mr. Bell: I can't answer that because I don't know who the other candidates were and I don't know what information was supplied to them.

Mr. Renwick: I wonder whom we could ask.

Mr. Conway: Let me ask you, Mr. Bell, did you have a copy of the report before your interview?

Mr. Bell: Yes, I consulted people who were supposedly involved in the feasibility study and reviewed it to see exactly what was being proposed.

Mr. Conway: You got or had access to the report of Sears-Klein--

Interjection.

Mr. Conway: Klein and Sears, Sears-Roebuck. Earlier testimony indicates it is all one happy family anyway.

Did you get that from somebody in the consulting firm? Did you get it from somebody at the gallery or how did you actually get it?

Mr. Bell: The search process was handled by a firm, Woods Gordon.

Mr. Conway: They gave it to you?

Mr. Bell: And they provided access to it.

Mr. Conway: Mr. MacEachern, did you say that Mr. Bell told you that he was the only one to have had it?

Mr. MacEachern: That is correct.

Mr. Conway: Do you recall having said that to Mr. MacEachern?

Mr. Bell: It was outside the Klein house.

Mr. Renwick: I am quite sure that motion will not be recorded.

Mr. Bell: No, I am sure it isn't recorded.

Mr. Conway: So you disagree with what Mr. MacEachern has alleged?

Mr. Bell: I don't know what the other--

Mr. Conway: On that point, Mr. MacEachern says specifically and repeats it now that you told him that you were the only applicant to have had prior access to the Sears-Klein report.

Mr. Bell: Klein and Sears report.

Mr. Conway: Yes or no. He said that. You say that you either have no memory of having said that or you deny having said that.

Mr. Bell: I have no memory of saying it.

Mr. Conway: And you have a very distinct memory of that, Mr. MacEachern.

Mr. MacEachern: Distinct.

Hon. Mr. Baetz: To the observation on the restaurant, again I would ask my deputy to speak to this since he has been very much involved in it.

Mr. Cornell: Mr. MacEachern, in that connection you mentioned myself as having said that the restaurant was not to be expanded, and the gift shop. Was that at that first large meeting we had? Is that the time you are referring to?

Mr. MacEachern: Yes.

Mr. Cornell: From the ministry, Bernie Webber, our executive director of finance and administration, was also there. As you know, we didn't keep minutes. Like Mr. Bell, I can say that I don't have any memory of having said that. However, if I did, I am sure I said at that time, "I am quite sure there is not a planned expansion of the restaurant nor a planned expansion of the gift shop."

I think I can say that with great authority even though it seems eons ago because it is still my understanding that the restaurant and the gift shop are going to be the same size. Perhaps Michael Noon could come up and speak to that; I may be misinformed.

Mr. Conway: While he is coming up, Mr. MacEachern, for those of who have not seen or cannot recall that, are you alleging that the day or at the time that the gallery closed down they took the snack shop or whatever and made it into a licensed tavern?

Mr. MacEachern: Shortly after.

Interjections.

Mr. Conway: There is a lot of chuckling here. I want to be sure.

Interjection: A lot of knowledgeable people.

Mr. Conway: There are a lot of knowledgeable people; maybe we should have some of them at the table. I just want to be clear, before we hear Mr. Noon's response, that we fully appreciate the specific allegation you are making.

Mr. Renwick: One is about the prospective restaurant and gift shop and the other one is about the use which was immediately made of the existing--

Mr. MacEachern: Shortly after the gallery closing. There is an out building constructed of logs; it was called the snack shack where there were hamburgers and things and take-out foods. That was converted shortly after closing into a licensed restaurant, wine and beer. That is the building I am talking about that opened to the public without meeting the fire marshal's code.

Mr. Conway: You are in that business. I presume you are saying this is someone who operates a licensed establishment and to the best of your knowledge of the rules and regulations as they apply to your facility, they are not met by this ad hoc arrangement at the snack shack or whatever?

Mr. MacEachern: When I opened my establishments, the fire marshal and the liquor inspectors came out and checked every fire exit sign. When I saw this, the following day I phoned Chief Stewart of the town of Vaughan. He said: "I am not aware of it, I will certainly look into it and correct it."

Mr. Conway: I appreciate that clarification.

Mr. Chairman: Mr. Noon, would you like to expand on the extension of the facilities of the licensed snack shack?

Mr. Noon: Thank you, Mr. Chairman. I think probably Michael Bell can also speak to this, but as far as the planning for the changes to the gallery are concerned, as far as I am aware of the direction that the task force has given to the architects, there is no expansion of the restaurant. There is a slight rearrangement to the gift shop within its present situation. It has to be amended slightly because of the addition of the ramps for the disabled down into the restaurant, and storage space has been added, storage space which is very much needed because things have been stored all over the building. If that is expansion, it is within the compounds of the area that it is located.

If I may respond also to the snack shack situation, and perhaps Denis Jones of the McMichael collection could also reiterate this, it is our understanding from him that the snack shack was approved for the use by the liquor licence board after review and approval by the local fire chief. Mr. MacEachern apparently came and subsequently pointed out the need for an extra exit sign to the fire chief and the fire chief notified the collection and it was installed immediately.

Mr. Chairman: Any further questions? Mr. Roy.

Mr. Roy: Am I correct in assuming that when the gallery was operating, before it closed for renovations there existed on the premises a snack shack, as it was so called?

Mr. Noon: On the lands.

Mr. Roy: On the lands. This was a building, as Mr. MacEachern has described it, that was separated from the main gallery? Am I right?

Mr. Noon: Yes.

Mr. Roy: Could one be seated and have a hot dog, hamburger, that sort of thing?

Mr. Noon: I am not entirely sure. I think you should perhaps direct those remarks to representatives from the gallery. I do not know the total operation of the whole gallery, but that is my understanding, it is a snack bar operation.

Mr. Roy: But at any time prior to the closing of the gallery, did that snack shack have a liquor licence?

Mr. Noon: Not that I am aware of.

Mr. Roy: It has a liquor licence now.

Mr. Noon: It is my understanding, yes. As I pointed out it got an approval from the liquor licence board. This is because the restaurant services were discontinued in the gallery while the renovations were taking place.

Mr. Kolyn: Would that be primarily to feed the contractors, the people working there? Instead of them moving five miles into the town or wherever they go, you have it on the premises.

Mr. Noon: I think it perhaps more appropriate for Michael Bell to respond to that question because of its relationship to the operation of the gallery.

Mr. Roy: There was a separate snack shop, but there was a restaurant in the building itself.

Mr. Noon: There was a restaurant in the building itself.

Mr. Roy: Was there a liquor licence associated with the restaurant?

Mr. Noon: Yes, as far as I know it served wine and liquor.

Mr. MacEachern: Wine and beer.

Mr. Roy: What are you saying, Mr. MacEachern, has been enlarged?

Mr. MacEachern: The restaurant in the main gallery. It is now going for approval of a complete licence--liquor, wine and beer, not just wine and beer. That is the public notice for the Liquor Licence Board of Ontario.

Mr. Roy: But that restaurant had sort of a limited licence prior to that.

Mr. MacEachern: Yes.

Mr. Conway: I would like to hear from Mr. Jones, if he is here, because of the fire safety aspect. I appreciate very much what you have told us, Mr. Noon, but if we could just briefly hear from Mr. Jones of the gallery if he has anything to add.

Ms. Fish: Before Mr. Jones comes, could I just clarify one thing. Mr. Noon, just before you leave, I think from all of this, particularly some of the questioning that my colleague Mr. Roy has just put, that there was a restaurant that was licensed for wine and beer in the gallery at the same time that there was an unlicensed snack bar, or something of that sort, on the grounds--the Snack Shack, or whatever the title is--

Mr. Noon: Yes.

Ms. Fish:--on the grounds, but not in the gallery proper. The restaurant in the gallery proper was closed during the course of renovations and at the time it was closed, or shortly thereafter, the Snack Shack that had previously operated on the grounds continued to operate with the addition of a wine and beer licence, and perhaps some menu change that would pick up in effect some of the service that might have been available previously in the restaurant downstairs in the gallery that was now closed. Have I got that train correct?

Mr. Noon: That is my understanding, yes.

Ms. Fish: The licence hearing that Mr. MacEachern is referring to for a full licence for liquor, wine and beer is a hearing for licensing of the restaurant that will reopen within the gallery proper as distinct from the Snack Shack. Have I got that correct? I am not sure I have.

Mr. MacEachern: I am not sure either because it just says the McMichael Canadian Collection Restaurant. It does not stipulate which building has applied for the licence.

Mr. Noon: But it is agreed that it says "dining lounge replaces dining room." I would imagine that that is the restaurant in the main building.

Ms. Fish: That can be confirmed with Mr. Jones. Thank you very much.

Mr. Conway: My only concern, and I do not want to prolong this, is that we have been well exposed now to great government and board concern about this gallery that needs to be closed for fire safety reasons. I would be a little disturbed if I thought that having closed the gallery for fire safety and other reasons, the first thing that happens is that an allied operation opens on the grounds, about which there are fire safety concerns.

Ms. Fish: Then I will just try to reaffirm my understanding from Mr. Noon's remarks. I have understood Mr. Noon to say, and correct me on this, that at the time of the opening of the rather more wonderful Snack Shack--I don't know how to describe it--it had been cleared by the liquor board inspectors in so far as their concerns about capacity, fire and whatever else, and by the local fire department. So at the time it opened, it had been cleared by the local fire department.

Mr. Noon: Yes.

Ms. Fish: It was subsequent to the opening that a further concern arose about the fire department having missed something out perhaps, and that the fire department made an amending order for an adjustment which was complied with directly. In so far as the initial opening was concerned, it was opened with the full understanding that it had been fully and completely cleared by the fire department, and that the point about the exit signs was a supplementary concern of the fire department. Is that a correct understanding?

Mr. Noon: Yes.

Ms. Fish: Thank you very much.

Mr. Chairman: Do we still want Mr. Jones?

Mr. Conway: If he could say what he said at the back of the room, that would end it.

Mr. Chairman: Mr. Noon, I believe there is another supplementary from Mr. Pollock.

Mr. Pollock: Is this Snack Shack which has the licence now going to lose its licence when the restaurant reopens?

Mr. Noon: I think so. I would have to ask the director as far as the future plans of that operation are concerned. It may not.

Mr. Chairman: Mr. Noon, thank you.

Mr. Kennedy: Just before you leave, Mr. MacEachern, you mentioned that your association had commissioned a study of your own into some aspects of McMichael. Could you tell us about that?

Mr. MacEachern: We gave the board a copy of the study undertaken by Jack Marshall, who is a fire protection engineer.

Mr. Kennedy: Was it to do with the renovations, or the fire hazards in the building?

Mr. MacEachern: Yes.

Mr. Kennedy: Was it somewhat parallel to the Klein and Sears study? Did it deal with the same concerns?

Mr. MacEachern: Do you want me to read it all to you?

Mr. Kennedy: No, if you would just give the background. I just wondered if it paralleled the other submissions as a contribution to the overall concern of the need for changes.

Mr. MacEachern: It contradicted them. It didn't feel that the drastic measure of closing for two years was necessary. It said the closing should be for just two months at the most.

Mr. Kennedy: Perhaps the minister or the deputy could comment on the disposition of that report which was submitted by the organization Mr. MacEachern represents.

Mr. Chairman: Could you be more specific, Mr. Kennedy?

Mr. Kennedy: The merchants commissioned a study by James Marshall and Associates and it was submitted to the board. What happened to it then, do you know?

Mr. Chairman: Is the minister aware of this report?

Hon. Mr. Baetz: We are aware of it. It was submitted to the board, I understand.

Mr. Chairman: I imagine you would need the chairman of the board to comment on it.

Ms. Fish: I have a suggestion which I hope will be helpful. I leaned over, quietly, to ask Mr. MacEachern whether it was his intention, in the normal course, to be coming down tomorrow, and I believe he nodded that it was. I had indicated earlier that I had some further questions that I wanted to explore with him. I am mindful of the time, and I am also now quite interested in the discussion we started on about that alternative report.

I was going to suggest, Mr. MacEachern, that you are holding a copy of that report, or at least a summary of it. I wondered whether it might be possible to have a copy of that made available to members and to adjourn the questioning until tomorrow morning, since Mr. MacEachern indicated he would be coming down in any event. That would enable us to have a look at the report and to pursue a line of questioning.

Mr. Renwick: I would like to have a copy of the Ministry of Industry and Tourism report.

Ms. Fish: That would be helpful as well. I am sorry, I had meant to ask for that.

Mr. Chairman: Before we adjourn, I would like to inform the committee that the clerk has been advised that Mr. Aaron Milrad, counsel for Professional Art Dealers Association of Canada, would like to appear and the only time would be 11 o'clock tomorrow. If we could proceed with questioning Mr. MacEachern at 10 o'clock, perhaps by 11 o'clock we could ask Mr. Milrad to be the next witness, followed by the Friends of the McMichael Gallery. Is that the consensus on that order? Then he is to be followed by the last witness, the Ontario Association of Art Galleries represented by Mr. O'Donal.

I thank you, Mr. MacEachern, for your appearance today. We will see you tomorrow. Is there a motion to adjourn?

The committee adjourned at 5 p.m.

A24N
KC 12
S 78

Government
Publications

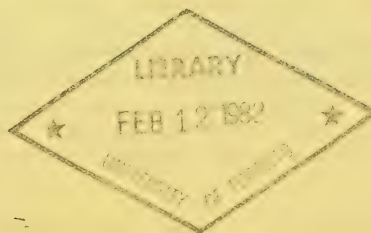
S-5

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

MCMICHAEL CANADIAN COLLECTION AMENDMENT ACT

THURSDAY, FEBRUARY 4, 1982

Morning sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Shymko, Y. R. (High Park-Swansea PC)
VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)
Conway, S. G. (Renfrew North L)
Dean, G. H. (Wentworth PC)
Edighoffer, H. A. (Perth L)
Fish, S. A. (St. George PC)
Jones, T. (Mississauga North PC)
Kennedy, R. D. (Mississauga South PC)
Kolyn, A. (Lakeshore PC)
Laughren, F. (Nickel Belt NDP)
Renwick, J. A. (Riverdale NDP)
Roy, A. J. (Ottawa East L)

Clerk: Arnott, D.

From the Ministry of Culture and Recreation:
Baetz, Hon. R. C., Minister
Cornell, W., Deputy Minister
Noon, M., Director, Grants Administration Branch
Webber, Executive Director, Finance and Administration Branch

From the Ministry of the Attorney General:
Williams, F. N., Legislative Counsel

Witnesses:

From the McMichael Canadian Collection:
Bell, M., Executive Director
Jones, D., Manager, Technical Services

From the Kleinburg and Area Merchant and Tourism Association:
MacEachern, J.A., Chairman

From the Friends of the McMichael Gallery:
Clague, J. R., Executive Director

ERRATUM

In issue S-3, Wednesday, February 3, 1982, morning sitting, p.34,
Mr. Laird Smith should read Mr. Larratt-Smith.

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, February 4, 1982

The committee met at 10:27 a.m. in committee room No. 228.

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

Resuming consideration of Bill 175, An Act to amend the McMichael Canadian Collection Act.

Mr. Chairman: I see a quorum and call the committee to order. We will continue our deliberations on Bill 175.

There are two documents that have been tabled with this committee and the clerk. One is from the J. W. Marshall and Associates, Report No. 1, dated July 31, 1981, to the Kleinburg and Area Merchant and Tourism Association. The other one is a report on the small business management development program for Kleinburg for the Ontario Ministry of Industry and Tourism, dated February 1982.

I would like to inform you that we will be having some changes in the order of witnesses. Mr. Milrad, the counsel for the Professional Art Dealers' Association of Canada, has informed us this morning that he does not wish to appear before this committee. Therefore, we will hear from Mr. MacEachern to be followed by the Friends of the McMichael Gallery. In the afternoon we will hear from Mr. O'Donal from the Ontario Association of Art Galleries.

I would like to ask Mr. MacEachern to take the witness seat. The chairman of this committee is responsible for the public advertisement of the deliberations of this committee and informing the public of the dates and the hearings and asking for submissions. The clerk acts on the order of the chairman as to the procedures. I simply want to state that there has been a misrepresentation of facts in a statement made by Mr. MacEachern --and I have a copy of Hansard.

He said: "The present administration and a public relations firm told the clerk of this committee that there were not any local newspapers in the area in which to advertise these hearings today."

I would like to point out that the present administration had never contacted the clerk and had no contact whatsoever in mentioning or referring to the advertisement. The clerk did call Foster, the public advertising agency--it is not a public relations firm--normally charged with the responsibilities in delivering the advertisement and the general government advertisement for the government. It is that particular advertising agency that informed the clerk that there was no local newspaper.

Subsequent to this, in a conversation with interested parties, he did find out that in fact there were four papers. On informing me of this, I immediately instructed the clerk that the advertisements be placed in the four local newspapers. I would like

to point out if there was any implication of any form of conspiracy to withhold information from the area of Kleinburg, that is certainly not so.

Mr. MacEachern: I think my point, Mr. Chairman, was strictly to say that as a community that lives up there and works out there, we could be helpful to the ministry, the gallery, the board or something. I am aware that there are newspapers, et cetera, and we could be get some advertising.

Mr. Chairman: Absolutely. I can assure you that I, as the chairman, and the clerk were making all the efforts to find out whether or not there is a way of informing you and that we wanted the opinion of the local area residents.

Mr. MacEachern: Thank you.

Mr. Chairman: I have an order of speakers. Mr. MacEachern had indicated that he would be with us in the early part of this morning's deliberations. As I look at the list, I have Mr. Kolyn first, followed by Ms. Fish.

Mr. Kolyn: Good morning, Mr. MacEachern. I would just like to go into the bit about the gallery closing again. As you are well aware, the Kortright centre opened on October 6 and half of the McMichael collection remained in the approximate area of Kleinburg. Do you think the attendance at the Kortright centre has helped the town of Kleinburg in any way?

Mr. MacEachern: None whatsoever, to be quite frank.

Mr. Kolyn: What is the proximity of the Kortright centre to Kleinburg? How far away is it? I don't know the area.

Mr. MacEachern: It is approximately four miles away. It is on Pine Valley Drive which is a dirt road, I would say two miles south of Major Mackenzie Drive. The four per cent of the art collection that is there is housed in the basement with no internal signs.

Mr. Kolyn: I would like to go back to one of the figures you had mentioned of how much business you had lost. I think you used the \$100,000 figure, was it?

Mr. MacEachern: Approximately, yes. That is from the closing.

Mr. Kolyn: For somebody who was in the private sector, I think I know some of your problems from the business point of view. My business was your business basically, and at one time I was in the same position that you are today. You live in a small village, and I had lived in a small village for about eight years. I don't really want to get into the gross of what you do because I think that is private and it is really not of concern to this committee per se. Normally, there would be a peak period for you when the gallery was opened and then you would have an off season. What I would like to know is what would be the drop in percentage rate? Could you give me an idea of how much your business dropped off, say, after October normally?

Mr. MacEachern: We really have three peak seasons. October, December with accompanying Christmas parties, and June are our three peak months. Our slowest months are January, February and March.

Mr. Kolyn: This time when you went into the slow season, how much greater was the percentage?

Mr. MacEachern: I don't quite understand.

Mr. Kolyn: I mean normally you do drop off some business in the non-peak season. Is it a 20 per cent drop-off, a 30 per cent drop-off or a 50 per cent drop-off?

Mr. MacEachern: In the slow period?

Mr. Kolyn: Yes.

Mr. MacEachern: Fifty per cent.

Mr. Kolyn: What is the figure at this particular time?

Mr. MacEachern: I haven't got all my January figures.

Mr. Kolyn: Approximately.

Mr. MacEachern: I would say we are down probably 75 to 80 per cent. The problem is to come out to dine in Kleinburg. In the winter months, the biggest draw was the gallery when it was open. It was actually more of a draw in the winter months percentage-wise than, say, in the summertime.

Mr. Kolyn: There must be a reason for them to come out that far. I understand that. We have both lived in a small village. I spent seven years in a small village. It was very fruitful, I must say, but I always found that when we lived in a small village of 1,800 people, there was a saying, "If you had nothing to hide, you had nothing to worry about." I would think that in the number of years I was there, if there was any problem in the village or in the surrounding area the people who lived in the village knew about it first. I just want to ask you, since you had the fire chief who lived in the village, was there no inkling by any of the citizens as to some of the fire problems that were being addressed by him at the Kleinburg gallery?

Mr. MacEachern: First, let me correct you. The fire chief does not live in Kleinburg. The town of Vaughan is comprised of a number of communities. I can't say where he lives. The chief's office is in Maple. I believe he actually lives in Maple, which is five or six miles away.

Mr. Kolyn: But surely some of the children of people who live in town would be employed on a part-time basis and they would hear the gossip or whatever goes on at the gallery. Certainly some of that information would have leaked back sooner to the people of the town, if there was anything, than to anybody here in Toronto. Would you accept that?

Mr. MacEachern: Yes, I would accept that, but it never really occurred as far as fire hazards at the gallery. I never even heard an inkling of it.

Mr. Kolyn: Nothing whatsoever?

Mr. MacEachern: Not a thing. I had heard rumblings that there were problems at the gallery. It is odd, because being in the restaurant I am sort of the focal point of the local yackety-yack in the lounge and things like that, but I did not pick it up at all.

Mr. Kolyn: I see. Thank you. Those are all my questions.

Ms. Fish: I actually had some questions which Mr. Kolyn has touched upon, but perhaps I could just pursue a couple. The first was about the Kortright situation. I was going to ask you a question similar to one asked by Mr. Kolyn. You mention that you felt part of the problem with Kortright is that the exhibition, the display, was--I think you said--housed in a basement, with no internal signs. I take it you are suggesting it was inaccessible, not well publicized; I am just not quite sure.

Mr. MacEachern: There are signs on the highway saying "Kortright centre, temporary home for the McMichael Canadian Collection."

Ms. Fish: I see. What was your point about no internal signs?

Mr. MacEachern: I feel that four per cent of the collection is not much to display. I have had a lot of tour companies that have said, "Well, we are not going to bother showing it. We cannot possibly take people out there to see four per cent of the collection."

Ms. Fish: So your sense is, as somebody was saying yesterday, that there were roughly two tour buses a day, or a figure similar to that.

Mr. MacEachern: Sometimes the tours reach three or four busloads.

Ms. Fish: Your information is that the tours are not going to the Kortright centre.

Mr. MacEachern: Yes, from the tour companies I deal with, and I deal with a number of them that have spouse programs for conventions in Toronto, et cetera. One day they will book Stratford. One day they will go to Niagara-on-the-Lake, and one day they will go to Kleinburg. They have these spouse programs and I deal with a lot of those companies.

Ms. Fish: I take it they are a fairly significant component of your business as it relates to the gallery.

Mr. MacEachern: Very significant.

Ms. Fish: Is the problem with the partial exhibition at

Kortright the size of the exhibition more than what you were suggesting about a lack of internal signage, which would suggest that was more for the person off the street not involved in a tour?

Mr. MacEachern: Yes. You are probably correct there.

Ms. Fish: It would be more of situation with the size of the collection and the tour.

Let me move then to the situation about the drop in your business. I am not certain that this line of questioning is appropriate, given what you have just said about principal reliance on the tours. You did indicate that you would normally expect in a slow period, and you repeated the months that are in this Touche Ross study as a drop off, you would normally look to about a 50 per cent drop, and that you are now experiencing a 75 per cent or 80 per cent drop. I inferred from that that you were tying that to the closing of the gallery.

The question I put is just a question in my mind about whether there is an impact from other factors in the economy that you think might also be contributing to that? I will explain what I am looking at. I represent a riding right down here in Toronto with a number of restaurants and a number of small businesses, particularly retail. Several of them are in very serious trouble. Several have closed, not because of a lack of items around them, no lack of traffic, no lack of people, but being hit with the downturn in the economy and a general slowing.

I just wondered whether, in your view, you would feel you have equally been hit in that regard, or whether you are confident that your business would have maintained its preceding years' levels if the gallery had remained open.

10:40 a.m.

Mr. MacEachern: I think you are very correct. The economy has certainly hit the restaurant industry. There is no doubt about that, but I don't think it's the major factor. I don't want to pat myself on the back for the fact, but that I am still surviving with the McMichael gallery closed astounds me and I have had dealings with my bank and fortunately they have been a little sympathetic.

There is no doubt that economics is hurting everybody but certainly not with the impact on my business that the McMichael gallery closing has had.

Ms. Fish: So you would attribute the shift from a normal drop of, say, 50 per cent in that kind of January-February dull time, slow time, that increase to 75 or 80 per cent as being overwhelmingly a function of the gallery and only marginally a situation of the economy, such as is experienced by restaurants and small business in downtown Toronto?

Mr. MacEachern: If the gallery was still open, I may still have a drop but I would expect 55, maybe 60 per cent.

Ms. Fish: A very marginal drop is what you are saying.

Mr. MacEachern: That's right, a marginal drop compared to a drastic one.

Ms. Fish: Okay. Thank you very much.

Mr. Kennedy: Yesterday, Mr. MacEachern, you mentioned that in the planning they are cutting back on humidity control systems. Could you clarify that?

Mr. MacEachern: I learned that, Mr. Kennedy, from the legislative tour which I accompanied back in the fall. I can't remember the exact date--

Mr. Kennedy: About October or November.

Mr. MacEachern: October or November.

Mr. Kennedy: We were both there.

Mr. MacEachern: It was mentioned at that time by Mr. Sears or somebody that the humidity control was being cut in half and I can recall my statement to him. I said: "That sounds to me like being half pregnant." How do you cut a humidity control in half to save money, sort of thing? It seemed to me that you either have humidity control in an art gallery or you don't, but I am not an engineer.

Mr. Kennedy: No. As I recall it, we were also invited to go to the Kortright centre at one point earlier than that and view the exhibits there and at that time I recall discussing it with Mr. Bell and some of the other people involved with the gallery and it seemed to me it was part of a staging or a phasing. I wonder, Mr. Chairman--this is what I am trying to fit together--if Mr. Noon might come forward and explain just what stage we are at, what the phasing of the renovations is, and if he could take us through to when current plans call for the remedial work to be undertaken and completed.

Mr. Chairman: Mr. Noon.

Mr. Noon: Thank you, Mr. Chairman. In the original feasibility study that was undertaken by the consultants, the deficiencies of the existing building were identified. These were in the terms of safety for the public in the collection and of the building as well as the conservation measures necessary to protect the valuable collection.

In looking at the costs that may be involved in this whole project, the architects were instructed to look at a phased program of priorities to be dealt with. The priorities in the first phase of design work were primarily in connection with safety and accessibility. The mandate that was given to the architect was to look at safety from fire for the public, safety from fire for the collection, safety from fire for the buildings, accessibility to all of the public areas of the buildings for the disabled, which had been a problem for a long time, as well as a make-up air system in the restaurant, which had very inadequate ventilation because of the way it was originally planned, and any measures which may be

implemented for conservation which at a later stage of development need not necessarily be ripped out or replaced or duplicated.

The second priority that the architects have been given to study, and this is presently under investigation, is the whole issue of conservation. The heating and ventilation system that is being installed in the gallery is duct work. It is equipped to take humidity controls. The building itself requires extensive work in order to seal it, because of the humidity that would be within the building, in order to maintain a temperature control. The roof has an inadequate vapour barrier and the wall system, the log system, is subject to tremendous fluctuation in temperature. So there is no concept of halving the conservation measures at all. It is a staged program.

Mr. Kennedy: Just as an added item, I notice in the Leech report, which is dated 1978, they recommend engineering studies be commissioned with a view to eventual installation in the galleries of climate-controlled packages. Why do they say eventual if it is important to have everything ideal at some point?

Mr. Noon: I am not exactly sure why they would say eventual, other than I guess they appreciate that the complexity of the building requires extensive alterations to the skin as well as the installation of controls, and this can be done over a phased period of time which is--

Mr. Kennedy: Certainly Klein-Sears followed through on their numerous references to that need and apparently it is on a staged basis.

Mr. Noon: That is right, yes.

Mr. Kennedy: Is this essential or a factor in permitting an earlier opening of the gallery?

Mr. Noon: It is a factor only in that the gallery is in the staging for the construction for fire safety and accessibility. The additional work that is necessary to seal and provide the humidity controls can be done while the gallery is in operation.

Mr. Kennedy: Could you tell me then, where are we at now?

Mr. Noon: The gallery is at the stage of letting contracts for some of the architectural structural work in connection with the fire exits and the ramps for the disabled and investigating with their mechanical and electrical consultants the design process towards the ultimate conservation measures.

Mr. Chairman: Did you have a supplementary, Mr. Kolyn?

Mr. Kolyn: I just wanted to ask you in a wood construction, with the logs, how do you do the insulating? Because it seems to me for vapour barriers you must have insulation as well as plastic. How would you do it in this particular case where the building is there?

Mr. Noon: Apparently 18 per cent of the external wall

surface is of the log construction, and I understand there is means by which this can be treated in order to seal the spaces. The prime problem is in the roofing and the inadequate vapour barrier there. The cedar shakes would have to be removed and a better vapour barrier installed and better insulation too.

Mr. Kennedy: What is the opening date now? Is there one at this point?

Mr. Noon: I think the opening date that has been discussed before is still being aimed at. Obviously, one cannot predict the construction industry and any problems in that area but certainly that is what is being aimed for.

Mr. Kennedy: The Marshall report seemed to be generally consistent with the other studies, in other words, there is a need for addressing this very serious problem. Was it considered?

Mr. Noon: If I may respond in this way, the Marshall report is not the only other study that has been done on this building. There has been another study commissioned. The Marshall report, which emanates from Mr. Marshall himself, who is a consultant in wood, certainly acknowledges that it was a limited study because of brief access to the public areas of the gallery.

10:50 a.m.

This report, having been presented to the board, was passed to me for comment. I did as I have always done with reports of this nature, passed it on to our own consultants, which are the Ontario Fire Marshal as well as the local authorities, the town of Vaughan fire department. I quote some passages from the fire marshal's letter back to me:

"I am sure you were equally aware that most aspects of comments and recommendations contained in this report have been discussed in the feasibility study, stage two report prepared by Klein and Sears.

"In general, this report supports the upgrading measures which have been agreed to by all parties involved in the initial study. With the exception of the rooftop deluge system, none of the fire safety measures recommended were considered over response, to quote a term used in the report"--that is the Marshall report--"and the roof protection system was to be included for wetting of the cedar shakes in the event of a brush fire nearby.

"The experience of the author of this report has been in connection with the wood industry, thus it is not unexpected to see the emphasis on wood construction.

"From the outset we shared similar views that hazards included the basic layout of the floor areas and the lack of acceptable exits. It was never suggested that the structure should be replaced.

"In conclusion, the report does not differ greatly from our viewpoint on this gallery respecting life, safety and property protection."

I also quote from the response from the town of Vaughan fire department:

"I have reviewed this report and find it contains some of the same basic recommendations as that of the consultants, Klein and Sears. It would appear from his report that Mr. Marshall puts the life and fire safety aspect on a high priority with his views on such matters as exit, compartmentalization, sprinklers, heat and fire detection systems and fire routes.

"On page four of his report, he states that the same interior wood and panelling meets the present requirements for flame spread ratings for this occupancy in the Ontario Building Code, the National Building Code of Canada and other provincial building codes. If this is the case, he should be able to provide test results to prove this."

My staff and myself reviewed the report. I passed it to the architects, Klein and Sears, to the project managers, Hanscomb Roy, and we all concluded that it basically shares the same recommendations as the Klein and Sears report and just reinforces the urgency and necessity to get on with the job and make these renovations.

Mr. Kennedy: The big problem seems to be, since everybody agrees and acknowledges the need, the question of how it is to be achieved with the minimum of dislocation. Of course, you have addressed that and come to a conclusion.

I can certainly sympathize with Mr. MacEachern. In Port Credit last year, they totally closed the main street for new installations of services, paving. They were closed from May until--supposed to be October, but because of the weather a month later. It had a very serious impact on merchants. It seems to be one of the hazards, my socialist friend, of the private enterprise system that these things occur. Hopefully, as a result though, it will enhance the exhibit, the installation, and will make up in the future what may have been a temporary setback.

The least disturbance to the gallery would be the least disturbance to you and vice versa and so the goal is to complete the renovations, and let's go.

Mr. MacEachern: May I speak to that, Mr. Chairman?

The business associations felt, after our first meeting with the ministry and we had a peek at the Klein and Sears report, that it was somewhat of an alarmist report, and personally my restaurant is in a log, post and beam constructed building. We felt that the gallery was not that serious a hazard, and we wanted to check it out. We never questioned that there may be problems with it, but we did not think it was an alarmist situation as the report seemed to indicate.

We had limited funds. We didn't have \$30,000 like the Ontario government to commission a report and we didn't have a flock of architects as the ministry apparently has that we have seen parade before us in the last couple of days. What we did have was some

brain power and we went out and got the best fire protection engineer that we could get. Mr. Marshall is an expert in wood construction and from what I understand a fire protection engineer is a very specialized type of person. There are only three or five in the whole province or in Canada or something like that. You can see from his credentials he consults to and advises the federal building code people and the fire marshal's office of Ontario and so on.

We just wanted another opinion to say that it could be done in stages, that it wasn't a tinder box with flaming beams falling on little children's heads as was quoted to me in the ministry. It wasn't that severe and we wanted to sort of participate. We have been left out all along. It was just another indication that, "Okay, we will help you. We are concerned. We will pay out of our own pockets to have a very, granted, limited study." I am sure if Mr. Marshall had \$30,000 and a raft of input from ministry people, he could come up with an excellent study on the McMichael Canadian Collection.

But again it all comes back to the fact that we felt Klein and Sears were somewhat alarmist. We felt left out. We wanted to get our opinion and see what could happen and perhaps we could persuade the board or the ministry to say: "Okay. Let's sit down with you people and work with you and tell you what we are doing and we appreciate your concerns." To date that has not been proven or they have not accepted that.

Mr. Kennedy: Certainly it has had every consideration.

Mr. MacEachern: We are not here to fight. We have always taken the approach that we want to work with you as we have in the past, but the total secrecy around this whole matter leaves us in the position of being somewhat antagonistic. We don't like that. We are decent people.

Mr. Kennedy: As a citizen living a few miles from the gallery, I certainly didn't feel there was any secrecy. It was well publicized from away back.

Mr. MacEachern: No. It was told to us and was publicized, because of us, two weeks prior to when they were going to close for two years. We brought the press into it and that instigated meetings with the ministry and that brought about the conclusion that they were going to close for eight months and phase reopening. It was told to us by Michael Bell on July 19 that it was closing for two years and I said to Michael: "Is this a fait accompli? You mean you are just taking everything away for two years?" He said: "I am sorry but that's the board's decision. It is a two years' closure." That happened at lunch in my restaurant and I can name the table.

That is all the notice we were given, two weeks, and I don't think that's fair. You have a village of 1,200 people, 12 stores, and you have 300,000 people coming through that village by the gallery--286,000 I guess is the latest figure. We like to be advised. We have to be able to plan. I don't think that was well publicized. Two weeks is not much notice for us that our livelihood is being taken away.

Mr. Kennedy: I don't recollect it being only two weeks.

Mr. MacEachern: Perhaps you read the press in August and September when it finally closed in October, around Thanksgiving, but they were planning to close August 1 and we were told July 16.

Mr. Kennedy: August 1, 1981?

Mr. MacEachern: Yes.

11 a.m.

Mr. Kennedy: Mr. Chairman, I wanted to speak with Mr. Bell if he is here, having been up at the Kortright and having seen the partial exhibit, to get a few of these attendance figures.

Mr. Chairman: I do not see Mr. Bell. He may be outside if you would wait for a minute.

Mr. Edighoffer: While we are waiting for Mr. Bell, I would like to ask Mr. MacEachern: I noticed in his comments yesterday he was talking about the restaurant and gift shop and what not. Out of that, he stated, "At the last count I heard they were almost \$1 million over budget." What made you come to that conclusion?

Mr. MacEachern: In the figures that were circulated to us and I guess made public in July or August, was a budget of \$4.5 million for the renovations. On the legislative tour, it was brought out that it was \$5.4 million. That was in October. I understood yesterday--I do not know whether it was Mr. Noon or somebody else--that it was now up to \$5.8 million or \$6.3 million, I am not sure of the figure he quoted yesterday. But it was on the legislative tour in October where I picked up that it was now up to \$5.4 million.

Mr. Edighoffer: Thank you. I see Mr. Bell is here.

Mr. Chairman: Mr. Bell, we would like to question you.

Mr. Kennedy: Mr. MacEachern has made reference to the attendance at Kortright. As you know, I attended there at the invitation of the gallery last fall. What are the figures? How is that working out?

Mr. Bell: If I can recall correctly, up to December 27 it was about 18,000, in that range, if I recall correctly. The 1980 attendance at Kortright was somewhere in the 9,000 range, so there has been a substantial increase in the Kortright centre's attendance over the period of time since the collection has had its temporary exhibition at that site.

Mr. Kennedy: Do the structured tours go there?

Mr. Bell: When we put the Kortright centre together, it was put together to respond to the particular needs of the educational system, to use the collection quite effectively as an adjunct to their programs. We felt we had an obligation to provide

an opportunity for that educational touring activity to continue even during the time the main building was going to be closed down.

Mr. Kennedy: I just wondered how successful and acceptable that has been. Frankly, I was quite impressed with those facilities. Everything seemed to fit very well.

Mr. Chairman: Do you want to question the witness further?

Mr. Kennedy: No.

Mr. Chairman: Are there any further questions or comments?

Mr. Laughren: The overrun question that has been raised: What has been the progression of projected costs for the renovations?

Mr. Bell: In October we were provided with a cost check on the work as it was currently being proposed and designed. It was approximately \$5.3 million.

What we are looking at here in this renovation is that every time the engineering consultants review the design for an add-on of an electrical system, for instance, they have had to review the existing wiring in the building. They have had to come forward with some recommendations to upgrade that. That is basically the kind of overrun situation we are looking at, if you want to consider it an overrun in that sense.

There is some discussion at the current time, as you know from reading the material, that a significant portion of the building was built as a domestic residence. The floor loading requirements for a domestic residence, as I understand it, are quite a bit less than for a building of public assembly. So there may be some necessity to increase the floor loading in that area.

Mr. Laughren: Would that not have been known from the beginning when they were contemplating the renovations?

Mr. Bell: I am really speaking out of my field of competence, but as you open up a building and begin to see exactly what the structure is and how it is put together, that is the point at which you can begin to determine some of these things that are normally hidden under plaster ceilings, inside walls and things like that.

Mr. Laughren: What is the latest projected cost of the renovations?

Mr. Bell: The latest one we are working with is the \$5.3 million or \$5.4 million estimate, but we do have some of these other considerations that are being investigated and will have to be dealt with when we have the appropriate cost estimates done.

Mr. Laughren: Can I ask Mr. MacEachern a question, if no one else is on the list?

Mr. Chairman: Certainly.

Mr. Laughren: Thank you. I understand your concern.

Mr. MacEachern: I am getting more concerned from what I hear this morning.

Mr. Laughren: Yes. Surely you agree that it would have to be done in stages.

Mr. MacEachern: Yes.

Mr. Laughren: Would you have had more short stages or would you rather have had one or two longer stages? I am confused as to what you and the other merchants in Kleinburg would have preferred to have seen done. Presumably you have an interest in the proper preservation and care of the collection.

Mr. MacEachern: Sure. One of my family's paintings is hanging there.

Mr. Laughren: It is one reason why you have the successful business you have, if not the only reason. Surely to goodness you have the same interest as most of us in the McMichael collection. What is it that you think should have been done in terms of closing and reopening?

Mr. MacEachern: We had not addressed what kind of staging. I think we were concerned about keeping it partly open at all times, whether they be a bunch of little stages or some larger stages as long as portions of the gallery are open.

Mr. Laughren: But you are being very, very critical of the ministry and the collection in the way they are going about this. Presumably you must have a better plan of doing it.

Mr. MacEachern: I guess I am being critical. Look at this morning. We are talking about things that are presently under study. Mr. Noon said that. Who is controlling the budget? Who knows what they are going to come up with next? Are we guaranteed that it is going to be open on June 15? The Touche Ross report says, and I can quote it, that further delays are going to be hard for us to manage.

We have been led to believe that it is going to be a June 15 opening. Now we are getting this "presently under study." I mean they have not even done their work on it; they are just studying certain aspects of it. That is a big concern for us. We have mortgages on the line and everything else. I don't want to bring motherhood into it but--

Mr. Kennedy: Mr. Chairman, I want to ask a supplementary.

Mr. Chairman: Have you finished, Mr. Laughren, unless you would not mind if this is a supplementary.

Mr. Laughren: No. Go ahead.

Mr. Kennedy: I just wondered if Mr. Webber could perhaps enlighten us on the cost overrun elements of this.

Mr. Chairman: On the financial aspect of this?

Mr. Kennedy: Yes.

Mr. Webber: Mr. Chairman, I think the matter has actually been addressed in that certain aspects of the project are under further reassessment due to the conclusions and observations which the architects have more recently discovered. As I understand it, this relates to work they have had to do that was impossible to do while the gallery was open.

11:10 a.m.

My understanding at the moment is that under consideration by the board would be some elements that would add to the \$5.3 million or \$5.4 million estimate. In addition, I understand that part of the cost that is sometimes quoted in the project relates to the relocation costs associated with the temporary galleries at College Park and the Kortright centre. I think that brings the total up to something in the area of \$5.7 million or \$5.8 million.

Mr. Kennedy: So it is sort of in the nature of a contingency, you might say, or associated with it.

Mr. Webber: I can't really enlighten you further at this time on that point because the board is still considering the recommendations from the architects on these additional needs.

Mr. MacEachern: Mr. Chairman, it is my understanding that these cost overruns were apparent back at the October 23 task force meeting of the board, and here we are into February. I don't know. You pay an architect \$30,000 to do a study, then you appoint him to be the architect and, all of a sudden, you have all sorts of further studies done and overruns. It is beyond me. As a private businessman, I know I would not operate that way. I am sorry, but with all due respect it is a funny situation there.

Mr. Laughren: Is not knowing with any kind of precision what is happening really what is gnawing away at you? You are not sure about the--

Mr. MacEachern: We have never been informed of anything other than through ministry meetings and what we are hearing today. I don't know why the secrecy. It has been kept away from us. Why? What is at the bottom of all this? Why are we sort of being told: "Don't worry. Just go back and we will look after that. Be good boys." Why?

So we have become antagonistic. We have always worked with the McMichael gallery before. They are a member of our association and attended all our meetings. We had a super relationship with them in the past. You couldn't ask for a better governmental-private sector relationship than we had with the McMichael gallery and the local businesses. I am sure there would be a lot of towns across the country that have government offices, et cetera, that don't have as good a relationship as we had.

Mr. Conway: Mr. Chairman, I can't resist. We have invited

a couple of people forward to comment on some of this testimony. I notice Mr. Jones from the gallery visibly reacting to some of this testimony. I just wondered if he would like to come forward and comment on behalf of the gallery to this testimony, because one gets the impression that it may not be sitting too easily with him. I just wanted to give him the opportunity to come and perhaps respond to that last bit of testimony so we would have a better sense of the context. I certainly want the gallery position understood.

Mr. Renwick: Mr. Chairman, on a point of order: Did you not say that one of the witnesses was under a severe time restraint?

Mr. Chairman: I guess you were not here then. That particular witness, as I indicated, will not be appearing.

Mr. Renwick: I am sorry.

Mr. Conway: Would you again, sir, tell us who you are and your position?

Mr. Jones: My name is Dennis Jones, technical services manager of the gallery.

Mr. Conway: I noticed during Mr. MacEachern's response to the previous question that you seemed to be somewhat exercised.

Mr. Jones: I was somewhat surprised at his comment with reference to our having good relationships with the village. For example, we have not been involved with the Binder Twine Festival. We have been absent in spades, shall we say. We have not allowed the people who come to the Binder Twine Festival to park anywhere close to our property. We have even put signs up saying, "Not for anyone else but people who are visiting the gallery." We have not, I feel, been as friendly as it has been made out.

The other point is that I am surprised it has been mentioned that in a small village information is circulated that Mr. and Mrs. McMichael had not been talking to the people in Kleinburg and also mentioning their concerns and the fact that the information hadn't come.

Mr. Conway: Yes. I just want to be clear on one further point. Do I take it that in your view the gallery has not in the past had as friendly a relationship with the community as has been indicated and as you personally would like to have seen?

Mr. Jones: Yes. Correct.

Mr. Conway: Would you care to respond to that, Mr. MacEachern, so we can get an idea about this relationship?

Mr. MacEachern: Jean Pattison, who was the executive director at that time before she resigned, was a member of our association. She came to every meeting. We worked with her on tours; we promoted each other. In the restaurant, I had McMichael gallery posters up. I had it printed on my cards. I know that all the shops had literature.

As far as the Binder Twine Festival is concerned and parking, we fully understand that the gallery draws a large crowd. The binder twine festival--I don't know if any of you have heard of it--happens to be the largest one-day country fair in Canada, drawing up to 40,000 people plus. We understand that the gallery has visitors. They draw a lot of people to Kleinburg and then to binder twine. We understand they have to have their parking. We use farmers' fields and things like that, and highway boulevards and bus people in. People have walked five miles, parked their cars down on Highways 27 and 7 and walked up because they couldn't get near the town that day. We have shuttle services and that, so we totally understand. There was no ill feeling that the McMichaels needed the gallery parking lot for gallery visitors.

Mr. Jones: May I point out that last year for the first time we became fully involved. We had been involved in a peripheral way; I think we had one stand there one year. But last year we became fully involved. We opened up our parking lot to the festival. We had a hayride wagon running backwards and forwards, a shuttle service bringing the people from the village to the parking lot and from the parking lot to the village. That is the sort of involvement I like to see. I like to see the gallery fully involved, not sitting on the outside saying: "Okay, you have your festival, but we are going to keep to ourselves." I don't like the way that was in the past. Last year we did it, and I hope that will continue.

Mr. Chairman: Mr. MacEachern, surely you can't disagree with that.

Mr. MacEachern: No. None whatsoever.

Mr. Chairman: Any further questions? We have another witness who has been with us since Tuesday, since the beginning of the Friends of the McMichael Gallery, so if there are no further questions to be addressed to Mr. MacEachern I would like to ask our next witness to come before the committee.

Mr. Renwick: Not to interrupt the process, but one of the things I would be interested in is having the opportunity for a representative from the Ministry of Industry and Tourism to comment further on this report, particularly with respect to the forward planning problems that are involved in relation to the reopening, and then ask the ministry to comment on it. I don't want to interrupt the present proceedings, but at some point I wanted to make that request.

Mr. Chairman: If it is the wish of the committee to ask for more witnesses I certainly will ask the committee to indicate this. But since you made reference to the ministry--

Hon. Mr. Baetz: Mr. Chairman, in response to that request I might say that Mr. Webber has been in very close touch with the Minister of Industry and Tourism on this very question. He is here. I simply suggest that if you want that information introduced now I think he could do it very briefly and do it in a way that would be informative.

Interjections.

Mr. Renwick: I don't want to interrupt the presentation of public witnesses, but I would ask Mr. Webber if he would get in touch with the Ministry of Industry and Tourism and ask the person he has been in contact with whether that person could also attend here.

11:20 a.m.

Mr. Chairman: He could be available just in case we would want to question him. I think that can be communicated to Mr. Webber. Thank you, Mr. Renwick.

Thank you, Mr. MacEachern, for your time.

Mr. MacEachern: Thank you, Mr. Chairman and honourable members, for allowing us to speak.

Mr. Chairman: Our next witness is Mr. Clague, who is the executive director of the Friends of the McMichael Gallery.

Mr. Clague: Thank you, Mr. Chairman, members of the committee.

Mr. Chairman: Would you like to make a statement first?

Mr. Clague: Yes I would, please. By way of an introduction that really does not have direct bearing on my presence here as representative of the Friends of the McMichael Gallery, as has been noted by several members on the side, who I think have some sympathy with small towns, one finds oneself in a variety of roles if you become at all involved in the activities of a small village.

As a result, I not only found myself involved in the Kleinburg and Area Merchant and Tourism Association with Mr. MacEachern, who has just presented some testimony, but I would like to make just a brief side comment, before I begin my main remarks, as a former chairman of the Binder Twine Festival in the village of Kleinburg, to clarify perhaps a gap in the information that may have been presented to the committee.

For the past four years, to my direct knowledge, being chairman or on the executive committee of that particular festival, the McMichael Canadian Collection has had a very large presence on the festival grounds themselves in the form of exhibits and displays. They have been invited and have actually participated with us, and we very much enjoyed that. In fact, we very much appreciated two years ago the fact that at one point when we ran short of food materials--we ran short of coffee for a particular brand of coffee maker--we were able to call on the gallery's restaurant to provide us a temporary loan, which we subsequently replaced out of stock that we secured from a local merchant.

That's the type of symbiotic relationship that we had come to know and enjoy, and which, frankly, as members of the community we had seen severely ruptured in July 1981 and which has subsequently

deteriorated from that point to the stage Mr. MacEachern has indicated.

With respect to the Friends of the McMichael Gallery, I think I should make some general comments as to who we are, why we are here and why we exist. The Friends of the McMichael Gallery is a nonprofit public interest group supported by voluntary membership contributions. We have established associations not only with individuals but with 70 organizations across this country, having a combined membership and population exceeding some 10,000 people. Our own direct mailing list comprises 700 individuals and organizations who have stated positions around current issues at the McMichael Canadian Collection. So that represents, if you will, the interest constituency that we bring before you today.

As we indicated in our written request to appear here today, the concerns we would like to address, both in our statement and, as the committee wishes, in answer to questions, are basically eight items: our view of the impact of the proposed legislation on the collection as a public interest group concerned about the collection itself independently of either its governing body or its administrative agency; we would like to comment on the role of the collection's board of trustees; the manner in which the board appears to have executed its responsibilities to date; the manner in which we view the board as having executed its stewardship of the collection--and we view those as distinctly different; to comment on the relationship between the Ministry of Culture and Recreation, the collection's board of trustees, the founders and the public; to speak to the composition of the board of trustees, as has been done by two presentations before this committee; to address the adequacy of the proposed legislation in protecting the McMichael Canadian Collection as a heritage art collection, which is our major concern; and to examine the consequences specifically within the bill of eliminating the current acquisition fund without provisions for future acquisition financing.

By way of further information, the objectives of the Friends of the McMichael Gallery, with the nickname, fortunately or unfortunately, of MCCFriends, are as follows: to maintain the public interest and support for the McMichael Canadian Collection throughout Canada; to ensure that the inherent character of the present collection is preserved and protected; to provide a forum for the Canadian public to express their current and future concerns and desires relating to the McMichael Canadian Collection; and to recognize the contribution and continuing role of the founders of the McMichael Canadian Collection. It was on the basis of those objectives that, among other things, we filed application for incorporation as a nonprofit public interest group in the province of Ontario.

We were supported in this attempt by the Klein and Sears feasibility study, on page 47 of their stage one report, which reads as follows: "When the reorganization of the McMichael Canadian Collection has been accomplished the board should see to the establishment of a volunteer organization, the Friends of the McMichael Canadian Collection." It was on that basis we felt not only that it would be appropriate but that we would be accepted, we hoped, by the gallery, by the collection, by the ministry and by

the board as a group that was interested in promoting the collection.

You can imagine our surprise when our solicitors informed us, as a result of our application of November 26 for incorporation, that on January 25 the Ministry of Culture and Recreation filed a formal objection to our incorporation based on (a) its objectives, (b) its name and (c) the possibility that its activities could conflict with those of the McMichael Canadian Collection.

While we realize that there may indeed be legal questions to be ironed out between the ministry and our organization, we would submit that those questions could have best been resolved by the ministry approaching us directly rather than waiting some 10 weeks to reply to our application for incorporation. We can only assume that the delay of 10 weeks could be politically motivated to prevent a public interest group from speaking out.

That is the sole reason that we appear before you today, because we do feel that there are messages that must be conveyed publicly. It is unfortunate that it is necessary to do so in a legislative committee as opposed to the more informal settings of a natural and normal social relationship.

However, by way of background, the Friends of the McMichael Gallery have acquired as much information directly and indirectly as we could about the present situation and about how it has developed, and we have subsequently developed our own views about that information.

We would draw the committee's attention to the statement of the Honourable John Robarts on the opening of the McMichael Canadian Collection on July 8, 1966. He indicated that there were three objectives at that time in formulating the collection. The first is to collect and display in an appropriate setting the works of 10 eminent Canadian artists, and they are listed in his speech; the second is to preserve forever for the people of this nation this outstanding collection of Canadian art; the third is to encourage by example and by the provision of full assurance of permanent care and display the enhancement of Tapawingo's galleries through the donation of additional art treasures by others whose love of their country, its history and its art is akin to that of the McMichaels. They are certainly objectives that we have heard directly and indirectly supported in various ways, although the means have been subject to some question.

Further, Mr. Robarts went on to comment on something that we find is apparently at the source of the split within the board of directors or the board of trustees of the gallery and indeed is affecting its operation. We feel it is affecting its ability to carry out its responsibilities and, very frankly, impacts on the public of this province and on the people of this nation. Mr. Robarts commented on the 1965 agreement in this way:

"Shorn of its legal phraseology, the agreement provides a lifetime interest in Tapawingo, its grounds and its galleries for the McMichaels; an inviolable obligation on the part of the province to maintain the land, premises and art collection in

perpetuity; assignment of responsibility for the operation of the program to the Metropolitan Toronto and Region Conservation Authority"--which, incidentally, has now been transferred to a crown corporation--"and an assurance of public access to the collection on a planned and reasonable schedule."

I think that sums up quite well the major partner and the at that time Prime Minister of Ontario--he now would be called Premier of Ontario--his intent and his understanding and his interpretation of the agreement that was entered into between the McMichaels and the crown and, as Mr. Renwick so eloquently pointed out yesterday, on behalf of Her Majesty, whose right continues in some form under the current legislation.

11:30 a.m.

We were a bit surprised, in reviewing our information, to discover the apparent lack of knowledge, frankly, of either the collection or its governances, in history. Witness the Honourable Mr. Baetz's statement to the Legislature of Ontario in the afternoon session of Wednesday, December 9, 1981, in which he says: "Another example of the inappropriateness of the 1965 agreement is that agreement prohibits the display of anything except paintings. Today, an important and much loved part of the collection is its display of sculpture and Indian artefacts, which nobody would want us to disperse."

Apparently the honourable minister, and perhaps his staff, was unaware of a memorandum sent from the Premier of Ontario at that time, dated September 30, 1969, that says, "Gentlemen: This will refer to the agreement of November 18, 1965, between the province and Robert and Signe McMichael with respect to the McMichael Conservation Collection of Art.

"As the second paragraph of the preamble to the agreement indicates, the collection has always included not only paintings but also drawings, sculpture and artefacts. Accordingly, notwithstanding any apparent implication to the contrary in the agreement, the province has always contemplated that the collection may be augmented through the acquisition, by donation or purchase, of works of a similar nature reflective of the cultural heritage of Canada.

"Further, it has always been the contemplation of the province that whenever any work of art included in the collection is sold, the proceeds thereof will be added to the fund maintained by the Treasurer for dispersment, upon advice of the advisory committee, for purposes related to the collection.

"I trust the foregoing will help to clarify the terms under which the collection is being administered. Yours very truly, John P. Robarts. Sent to the advisory committee, McMichael Canadian Conservation Collection of Art, Kleinburg, Ontario."

There are two very fundamental points, aside from the contradiction to the minister's statement in the House--that is not my major concern--the two fundamental points as outlined in Mr. Robarts' clarification of the 1965 agreement are that artefacts of

any kind relating to the cultural heritage of Canada, inherent with the character of the collection, as established by the McMichaels, was intended to be included. That is the first point.

The second point has to do with something that came under heavy discussion yesterday, and that is the means wherein Mr. Newlands testimony by which art works that are not necessary for the collection purposes are dispersed of.

According to the original agreement, according to the act of 1972, and according to the statement of Mr. Robarts, it was the intent to have the funds from the sale of any art work not deemed suitable for the collection to be retained by the collection for the acquisition of art that was suitable.

As a matter of fact, there have been significant cases in the history of the gallery where donors have made donations knowing that the art work was not suitable to the character of the collection but it was the only artefact they had to give. Their intent was to give something that was outside the nature of the collection to the collection, so that it could, in some form, trade it for something that would be of value.

It would be very similar to the case--I would mention a specific one without embarrassing the donor--where an individual who was elderly, widowed, and had very fixed income--had no cash by which to make a donation to the gallery--submitted a painting to the collection that was not inherent with the character of the gallery with the specific desire that it be sold and the proceeds of that sale be used to acquire art that was consistent with the collection. "I do not have anything else to give you. Let me give you this. You trade it for something that you want."

To tie the collection's hands in that way to prevent that would be a travesty, because we already have an erosion of public confidence that I will speak to later on the part of donors that will, I believe very sincerely, in the future limit donations to the collection. To put further restrictions on donations would not be in the best interests of the public or the collection.

I refer to indications in the past several days while I was waiting patiently to appear before the committee. The source of the problems that have appeared here, in what I must say are rather byzantine form, appear to hark back to a split between various members of the board of directors or the board of trustees of the collection.

On the one hand, we have Mr. and Mrs. McMichael as the founders who established the collection under an agreement signed by Mr. Robarts on behalf of Her Majesty with certain rights and obligations and certain conditions attached to the gift. I am not of the legal profession so I would not be in a position to comment on the current standing of that; however, we have been advised by legal counsel retained on our behalf that agreement is very unique.

Clause 30 of that agreement willingly acknowledges a continuing and future obligation on the part of the crown. We find that quite unusual and our counsel did as well. That probably has

been what has created much of the difficulty from the legislative standpoint in helping the board answer a question that it asked for by informal motion at its meeting of June 16, 1981. The board passed a resolution that says:

"The board requests the Minister of Culture and Recreation to amend the McMichael Canadian Collection Act, 1972, to confirm that the powers of the board and the director are governed only by that act and are not limited by the agreement between Robert and Signe McMichael and Her Majesty the Queen, dated November 18, 1965. To the extent of any conflict or inconsistency between said agreement and said act, the said act shall in all cases prevail."

That resolution was passed by six trustees, it was opposed by Mr. and Mrs. McMichael, and the chairman abstained.

We have at that point, on June 16, 1981, the very date incidentally when Mr. McMichael appeared with counsel and asked for clarification of what his rights under the 1965 agreement were, which Mr. Taylor has described as a list of basic requirements, a statement by the board that says, "We want it very clear that we are only governed by the 1972 act and the 1965 agreement does not exist."

Without getting into the legalities--that is not our area of interest--our concern is that represents a deep rupture in the relationship of a board of trustees that was charged with the responsibility of managing a collection, not legal infighting among its members. We were amazed to hear Mr. Taylor, in the course of his description here and in the actions during the fall sitting of the Legislature, refer to himself and six other members of the board of trustees as the independent trustees. What does that label mean? Are not Mr. and Mrs. McMichael independent as well? Are the nine of them not the board of trustees to run an organization?

We are further amazed by and direct your attention to a press release made by Mr. Taylor in refutation of an article that appeared in the Globe and Mail. The last page--unfortunately I do not have a copy, but I will retrieve it for the committee if it should desire--of that says, "The board of trustees of the McMichael Canadian Collection," and there appear beneath that seven signatures. Remarkably, the seven individuals who signed that do not include Mr. and Mrs. McMichael; yet the signatures appear under the name, "The board of trustees of the McMichael Canadian Collection." It would appear then that the relationship at that date had deteriorated to such a point where seven members viewed themselves as the board of trustees and did not view the other two as being part of the board.

That erosion subsequently has erupted into what we have seen in this committee, which is most unfortunate because I believe the legislative mandate of the board of trustees was to manage the collection. I realize that there has been some sort of a lack of understanding and some sort of a gap and there may now be some sort of an agreement that may exist between two members of the board and the other seven on how the gallery is going to be operated, but the relationship deteriorated to such a point that legislative intervention was sought by the board of trustees or a majority of the board which we feel represents a serious rupture.

If I may be allowed a slight digression, my profession is as a management consultant in the area of organizational behaviour. My business primarily concerns itself with working with organizations to attempt to understand and try to manage situations of extreme difficulty when there are breakdowns of operating relationships. In that professional capacity, although I have not been formally retained and am not appearing here at a fee unfortunately, I would comment to the board and to the ministry that there have been sufficient symptoms throughout the chronology cited both by Mr. Taylor and the chronology cited by me to indicate there has been a need to bring issues to resolution.

11:40 a.m.

What Mr. Taylor appeared to indicate yesterday was the means of bringing those to resolution took two paths: to bury one and to seek legislative intervention of the other. I would submit that that is not a reasonable way to bring resolution to anything. Frankly, in my experience, to bring things out in the open and to sort them out, although very painful, has usually been the best recourse.

With respect to the board's relationship to its legislative mandate, while this will hopefully not come across as a homily, as has been so eloquently defined in the committee, we would submit that the role of the board of trustees has been since its inception in 1972 and continues to be--unless this committee recommends a change in that--to administer a collection, but not to define it. The initial draft of Bill 175 which appeared on the floor of the House and which, we understand, has now subsequently or is about to be amended, does indeed give the board powers to define the collection as well as to administer it.

It does so through the language, which we understand is about to be amended which reads, in effect, inclusion of any Canadian artist who has contributed to the development of Canadian art. That is a simple variation of an earlier draft that was withdrawn, which similarly opened up the nature of the collection to any living artist, because at that time it said contemporaries of the Group of Seven. As was eloquently pointed out on the floor at that time, since Mr. Casson is still alive and is a member of the Group of Seven, any artist living today is a contemporary of Mr. Casson and therefore, his work would be eligible to be included in that gallery.

Our point as a public interest group around the nature of the collection would be this: This was a specifically bounded collection in terms of its nature and its character. The initial gift determined that, the subsequent acquisitions confirmed that, the subsequent actions of the advisory committee and in the early days of the board of trustees, have continued to confirm that it is what might be called a period art collection.

What we are most concerned about as a group not only of the general public with some great interest, but also as a group representing the interests of a significant number of former donors to the collection is simply this: In whatever form by guarantees undertaken by the board of trustees, or more importantly, by

legislative mandate, that collection must be bounded as a period art collection. While there are perhaps conflicting viewpoints on this, we have talked with a number of museum galleries in the area of paintings and sculpture and native artefacts, similar to the McMichael Canadian Collection, but also in pottery, ceramics, stained glass, automotive parts and so forth.

What we have been told consistently is the most appropriate form of art collection by today's standards, let alone those of 1965, would be to have art collections that do not attempt to be all things to all people at all times, but rather have specifically identifiable characteristics that the public can choose to visit or not visit, knowing what those characteristics are. What we have in the McMichael Canadian Collection is a specifically described exhibit. People know what it is.

What we are saying is we want to keep it what it is, and we would encourage this committee to make sure that the legislation continues to remind the board and to clarify their responsibility, which is what they have asked for, and which is to administer a collection that is already defined and not to define it. To help assure that and to help deal with the question of eroded public confidence, we would encourage either the board of directors or, perhaps more importantly, the minister to introduce a further amendment to this bill.

Since the McMichael Canadian Collection Act is basically up for review at this point, we would encourage the minister to introduce an amendment before this committee that would require that the basic general business of the board of trustees be conducted in public and that the minutes of said meetings be readily made available to the public, save for those items of great sensitivity, which would include acquisitions, deacquisitions and personnel and budgetary matters that are normally considered by other bodies such as city councils and so forth to be appropriate for in camera operation.

We strongly feel that by opening the process of the board's action to the public, we remove much of the mystery that presently exists about what is happening there because we feel it is that sense of mystery. It is the declared statement of the chairman that the meetings are closed, that the minutes are not available, which incidentally, is completely contradictory to information we were given by both the Premier's office and the Attorney General's office, which said those minutes are available to the public, and yet we have had great difficulty in securing access to them, either through our own efforts or through the efforts of the Kleinburg and Area Merchant and Tourism Association.

We feel that because of the erosion of public confidence the board must undertake to open up its actions and activities to public view and public scrutiny. To continue to operate under the apparent cloak of mystery or, as Mr. MacEachern has described it, secrecy, will only foster a continuing lack of confidence by the general public. More importantly, from our group's point of view, it will seriously erode the desire of present donors to continue in their support of the gallery. People will not give things to organizations that they do not understand. It is as simple as that.

We also feel that the board should be reminded, either by us in this session--and this may very well be a homily--or be reminded by the committee or by legislation, which ever is most appropriate, that it does not have the capacity to delegate its powers to another body. We mention this because we understand that in the course of selection of the architects for this particular project, the board of directors initiated a process whereby a task force composed of board members and non-board members and retired board members would, indeed, undertake to not only hear submissions from the proposed architects, but would be empowered by the board to make the selection of those architects on behalf of the board. That task force would be further empowered to appoint a project manager to control the activities of the architect and the flow of construction in order to meet the proposed schedule.

While it is not our position to interpret things from a legal standpoint, we are quite concerned and our counsel has advised us that this is a delegation of powers that the board is not authorized to undertake. If it is responsible for the management of the collection, how can it delegate that management responsibility to another body? We are quite concerned as to how that may be answered.

Incidentally, we are also a little unclear as to some testimony that was offered yesterday. Mr. Noon would have us believe that it was always the intent of the board to put out to tender the issue of who would be the architects on this particular assignment. Perhaps we could refresh Mr. Noon's memory to indicate that on September 2, 1980, the board of trustees of the McMichael Canadian Collection established a task force to oversee the work of the architects. At that time, Mr. Noon, as the representative of the ministry, proposed that the tendering process for architectural selection be waived and that the firm of Klein and Sears be appointed directly to effect the necessary repairs.

I assume that recommendation was well motivated in the desire to deal with the very pressing issue of public safety. However, one month later at a meeting on October 2, 1980, of the board of trustees another report was tabled from a fire protection engineer, who had been retained by one of the architects bidding on the project, which indicated that there were some disagreements with the nature of the fire hazard as described by Klein and Sears and the rather drastic proposals for renovation that came therefrom.

11:50 a.m.

On the basis of the concern around that and the basis of a motion, I gather, and I am told, made by Mr. McMichael as reflected in the board minutes at any rate, on October 2 at the board meeting it was decided to go to tender for the architects and that process was then followed. I have indicated that at this meeting on November 6 the board then delegated the power of selection of the architect to the task force.

I would also wish to clarify something, incidentally, as long as we are dealing with what the board's responsibilities and actions are. If the board is directly administering this project of

construction and renovation, it is curious to me why it is that Mr. Noon, as the grant support unit of the Ministry of Culture and Recreation, is the person to whom tenders have been directed, not only for the architects but, to our knowledge, for all subsequent contracts for work. If the board is doing the tendering, why is the ministry receiving the tenders? Perhaps that is an arrangement that has been worked out between them of which we are not aware.

Moving on to another issue of the board's responsibility and the board's actions towards discharging that responsibility, I would like, with great reluctance, to read to the committee a letter from one of the gallery's significant donors, from whom it has just received a very generous gift and who has, through time, also provided the gallery with many items on loan. This is a letter dated September 17, 1981, addressed to Mr. McMichael regarding Indian masks and rattles.

"Dear Bob:

"You will recall that in August I telephoned you regarding picking up the artefacts I loaned to McMichael some two to three years ago.

"You advised me the gallery would be closing for renovation about Thanksgiving. I would appreciate it if the items could be left there until closing. I gladly complied with your request.

"Last Sunday I visited the gallery with some visiting relatives from England only to find the upper Indian gallery was closed and was told it had been dismantled. A very nice lady appeared on the scene and I explained my concern for my masks. She escorted us up to see the artefacts. She was most co-operative and could not have been nicer. I believe her name was Geraldine. I left my telephone number with her and asked that Brian Stratton call me on Monday. Mr. Stratton had written me some time ago, advising he was in charge of all loan materials.

"When I did not get a call on Monday, I phoned Tuesday and arranged to pick up the masks on Thursday morning at 10 a.m. I arrived at 9:55 on Thursday only to find Mr. Stratton not in. I was a little annoyed to say the least. A young lady appeared to say there must be a mistake, that the appointment was for Friday. As I am busy Friday, I knew that I had not made the mistake. I thought that somebody at the gallery would be able to get my masks, but to no avail. Up to now, I haven't had a call from them.

"My relations and transactions with you, Bob, have always been most courteous and enjoyable. I find that of late there has been a lack of personal touch and concern.

"I appreciate the security of my property but not the inconvenience of another trip over. Your call this afternoon, Bob, was the first I had from anyone at McMichaels. I telephoned Brian Stratton today, Friday, and have made arrangements to have my wife pick them up this morning at 10:30 a.m.

"Yours truly, Harold Groves."

Needless to say, Mr. Groves is not a happy man with his treatment under the current administration and board situation at the gallery.

I am also reminded of a comment that Mr. A. J. Casson, not only a member of the Group of Seven but a significant donor to the collection through time, made on the Naomi Loeb report on CBC television this past fall. Mr. Casson made a small remark at the end of his closing that we found most telling and in subsequent questioning he reconfirmed to us. It is his clearly stated intent that under the present circumstances and the method of treatment of the public by McMichael Canadian Collection, he has no intention whatsoever of giving them so much as a sketch in the future of his lifetime. We find that a most regrettable turn of events.

Perhaps the committee or members of the committee may be aware of other situations where similar donors are equally disappointed or concerned with what they see as an erosion in the present situation of confidence by the public in the institution at hand.

I should state at this point, while I have seriously condemned some actions of the board of trustees, I do so not out of a desire to punish them, not out of a desire to enter into a fight with them, not out of a desire to say, "You are wrong and you must admit it." That is not the issue. The issue is to describe the current state of deterioration in relationships, not in terms of artefacts, public safety or the other issues which the committee has heard.

There is a question of public confidence. In order to restore public confidence, one needs to be approachable, one needs to be supportive, one needs to be informative, one needs to be involving. Unfortunately, these are not characteristics which we see in the present actions of the board of trustees. There may be very good reasons for that, but we very strongly feel the time for those actions has long passed the time where it should change.

With respect to the legislation itself, we understand that Bill 175 would, in effect, remove clause 9 of the act of 1972. That clause establishes and maintains a special fund which comes from moneys received by the corporation, presumably in the form of cash gifts or otherwise, moneys received from the sale of any art work belonging to the corporation, all net profits from the sale of books, art reproductions, copyrights, artefacts and other wares by the corporation; and the income itself is a special fund, presumably being interest, investment income or whatever it might be.

More importantly, the corporation shall not expend any of the moneys in the special fund except for investment under subsection 2 or for the acquisition of art works and objects of the collection.

If you remove that section of the legislation that exists at present and instead transfer all receipts to the corporation into the general fund, what you do is remove all capacity for the collection to clearly receive dedicated gifts of cash towards the

purchase of artefacts, because you pass them now through the general fund rather than into the special dedicated fund that was isolated from general operating money and dedicated solely either for the purpose of accruing more income or ultimately for the acquisition of art.

We most strongly object to that because, again from the viewpoint of donors, both those who have made cash gifts and those who might intend to make future cash gifts, how are we to be assured that our donations of cash or gifts in lieu of cash to be converted thereto, how are we to be assured that those gifts will not end up in the general fund to buy new shelves for the bookshop or nicer chairs for the restaurant? These may very well be needed, but that would not be consistent with our intent in making the donation to buy works of art.

We would seriously question the reasoning behind removing that special fund. Perhaps there are reasons that have not yet been made known to us, but based on the information we have that is our concern.

With respect to an item within our objectives as an organization, that of recognizing the contribution of Mr. and Mrs. McMichael as the founders, I would like to simply bring forward the following facts: The minister, in his address to the Legislature of November 19, and again on December 9, made statements that indicated, "Although the collection would never have come into being without the McMichaels, I think it is important to note here that this growth was nurtured by many benefactors."

Mr. Baetz's words imply that the McMichaels made a specific donation which he later refers to as less than 10 per cent of the collection and that the gifts of Colonel McLaughlin, Dr. Stern and others would have been forthcoming without the McMichaels. Fortunately, some of the major donors, such as Dr. Stern, Mr. and Mrs. Mastin, Mr. and Mrs. Matthews, are still among us as are our immediate family members, such as Miss Isobel McLaughlin, the daughter of Mr. R. S. McLaughlin. They would be the first to state very clearly that had it not been for the untiring efforts of the McMichaels these great national treasures would not be accessible and, indeed, owned by the public in the McMichael Canadian Collection.

12 noon

The minister in his words of December 9 states that, for example, if the letter of the 1965 agreement as well as the spirit were adhered to, Mr. and Mrs. McMichael would still be required to donate to the crown all suitable art work they ever acquired personally.

Mr. Chairman and members of the committee, Mr. and Mrs. McMichael did adhere to the letter and spirit of the 1965 agreement and have donated almost as many more works as their original collection through the years from 1965 until 1981 as agreed to in section 16 of the 1965 agreement. Actually, through 13 years the McMichaels have personally acquired and added to the collection

works of art which were evaluated through those years at a total of \$565,700. Since a great part of these were given many years ago, it would be a conservative estimate that their present market value, both by current marketable art and by dollar value, would be at least \$2 million. By the same token, the 1965 gift of land, building and collection would have a current market value of about \$8 million.

Hence, if we calculate at present market values, the McMichaels' total gifts from the time of the 1965 agreement to 1961 would be in the neighbourhood of \$10 million. That is not an insignificant amount on the part of a major benefactor. To say, "After all, they have only given a small part of this; why should they have any say?" our two points around that are simply these:

To belittle the contribution of the McMichaels would, I think, be a travesty and probably was not the minister's intent. Furthermore, to indicate, as has been the case to this point, that acquisitions to the collection were as a result of public funds since 1965 would be totally untrue. To our knowledge and the best of our investigation, no public funds have been used to purchase a work of art for the McMichael Canadian Collection. Any additions that have been made to that collection since 1965 were the result of either donations by the McMichaels themselves or by other donors, many of whom were encouraged to donate by Mr. and Mrs. McMichael.

We find it very unfortunate and perhaps a further indication of the deterioration of the board's relationships that the September 30, 1981, gift agreement between Mr. and Mrs. McMichael and the McMichael Canadian Collection board of directors has yet to be officially received by the corporation. While it has received other gifts in 1981, for some reason it has chosen not to acknowledge that gift and confirm it by year-end, which would be normal board practice. We would wonder why.

We are encouraged by Mr. Taylor's comments that he desires to heal the breach. Presumably, he speaks in terms of healing the breach between himself, members of the board and Mr. and Mrs. McMichael. We would applaud that effort and we would hope that it would indeed come true.

Unfortunately, as I sit here now, I am keenly aware of the sense of negativism, apprehension and, in some cases, outright hostility coming from certain individuals now present in this room, deeply connected with the operation and administration of the McMichael Canadian Collection, directed towards me. I find that most unfortunate. Perhaps that is because I try to seek out what the facts are. I have searched for the truth and I have not let go of that search despite the frustrations that have been placed in our path. If that search has produced pain and difficulty, on the one hand, I would apologize and, on the other hand, I would say that is the name of the game if you are going to have public accountability.

I might just briefly comment, incidentally, on the issue of public safety that has been raised before this committee. I find it

curious that on page five of the Klein and Sears special report to the board they describe the situation at the gallery at the present time as potentially very hazardous. Yet on the legislative tour attended by various members of the committee, I gather, including Mr. Kennedy, Mr. Sears made the comment to the public, in response to a question, that hazardous is a word is open to interpretation. It is not really a definitive term.

How in the world can you close down a public gallery to public access, create as much furor as has been created around the closing of the gallery and around what is being done, et cetera, and make the statement that you don't know what the word "hazardous" means, but that you are going to base a course of action on something being potentially very hazardous?

We are left with a gap in information. What is happening? What are we dealing with in this particular situation? I find it interesting to hear before this committee the testimony given that the terms of reference for the feasibility study included with great seriousness the investigation of fire safety and public protection measures.

With the committee's indulgence, I would like to read the terms of reference and study guidelines for a feasibility study on capital expansion, January 1980, on McMichael Canadian Collection letterhead, bound in a volume by Klein and Sears, submitted to the board as a special report in June 1981. Without reading the entire thing, I will simply read extracts. If I am faulted for my selection, I would be glad to submit the whole thing.

"As the collection has grown, the buildings have become deficient in a number of areas: storage, shipping and receiving, et cetera. A study, therefore, be carried out in terms of the McMichael Canadian Collection's roles and operational requirements to establish: (a) shortcomings of existing buildings; (b) costs of adjusting the above within the existing buildings; (c) methods of implementation of (a) and (b); (d) feasibility of an addition to the present buildings; (e) design considerations of an addition; (f) estimates of capital and annual operating/maintenance costs.

"With respect to present buildings, the study should include staff and trustee interviews; examination of studies, codes, standards and recommendations of and direct contact with organizations including the Ontario fire marshal's office, Ontario Building Code, Ontario Hydro, Occupational Health and Safety Act, 1978, et cetera.

"Areas of concern: (a) shipping and receiving; (b) fire code regulations and standards; (c) movement of equipment and works of art; (d) hydro supply, normal and emergency; (e) heating and heat conservation; (f) water supply, normal and fire fighting; (g) sewage; (h) offices; (i) staff facilities; (j) traffic flow." For some strange reason we begin again with "(j) storage"; I believe that would be an error. "(k) restaurant and snack bar, location and size; (l) book shop, location and size; (m) workshops, location and size; (n) staff house, relative to future usage; (o) workshop buildings, location and size; (p) safety; (q) conservation of building fabric; (r) maintenance; (s) service roads and parking."

Mr. Chairman, I would conclude, not being an expert in architecture but being very used to reading terms and specifications for studies as a part of my profession, that if public safety was the overriding concern of the board in initiating the feasibility study I find it very strange that safety comes out in the list here as (p) and we start with (a).

I find that nowhere are the words "fire safety" or "adequacy of public protection" ever used in the terms for the feasibility study. Therefore, I am left again with either a confusion or the unfortunate conclusion that the feasibility study was some sort of subterfuge, which produced statements about fire safety that have subsequently then caused a lot of anguish, have caused disruption in the community of Kleinburg and have caused the problems that Mr. MacEachern has referred to in the businesses of the area.

What I find is that there is an amazing contradiction of information that is available within the board's own records. I find it amazing that it is necessary for an organization such as the Kleinburg and Area Merchant and Tourism Association to have to engage the Ontario Ombudsman to get answers to 19 questions and requests for 12 documents submitted to the board of trustees and submitted to the ministry in July 1981.

12:10 p.m.

I find it amazing that to this day there are not only disruptions in what is happening but continuing erosions in the relationship between the gallery and the public. I return again to my first point. I find it amazing that a public group such as ourselves is forced with a delay of some 10 weeks in response to an application for incorporation, where that objection comes from the very ministry that administers the McMichael Canadian Collection. We can only view that as an attempt to muzzle us. With all due respect, that is the only reasonable conclusion for the delay.

Thank you very much. I will be glad to answer any questions that you might have.

Mr. Chairman: Thank you, Mr. Clague. I open a list of questioners.

Mr. Conway: First of all, I want to establish, Mr. Clague, exactly who you are. You told us you are not a lawyer. I presume you are not an architect, and I got the feeling at some point that you might be a consultant. Am I right?

Mr. Clague: That is correct.

Mr. Renwick: That's what he said. He said he was a management consultant.

Mr. Conway: I was out making a couple of phone calls. So you are a management consultant.

Mr. Clague: That's correct.

Mr. Conway: That's your professional background.

One of my questions is procedural. You mentioned it earlier and you came back to it; I think maybe you have answered it, but I just want to be clear. I think I raised the question with the chairman, or it was raised with the chairman, of whether or not we could have access to certain information from the board. I gather from what you have mentioned--you have made a couple of references to resolutions of the board and the votes of the board members--you did say at the end that you drew in the Ombudsman. Where did you get the board minutes that you have?

Mr. Clague: The source of quotations from the board minutes that I made came as a result of an inquiry launched by the Kleinburg and Area Merchant and Tourism Association through the Ombudsman's office. It was as a result of that that we received this information.

Mr. Conway: So the Office of the Ombudsman has furnished you people or the Kleinburg group with some extracts of the board's minutes.

Mr. Clague: That's correct.

Mr. Conway: In particular can you tell us how many?

Mr. Clague: I believe what I have before me would be approximately four board meetings. I believe I have quoted from two.

Mr. Conway: Mr. Chairman, perhaps you might direct staff to contact the Office of the Ombudsman to supply the committee with the file they gathered in this connection. I don't particularly like to have witnesses referring to information of that kind that we do not have. I would just like, if it's possible, to call the Ombudsman's office and have that information, such as they have been able to gather it, provided to us.

Mr. Chairman: Specifically, all the information communicated between whom? Between the Friends of the McMichael Gallery and the Ombudsman? Or the ministry?

Mr. Conway: Certainly any of the board minutes that they have I would be interested to see--whatever the Ombudsman has, generally, assuming it's not an encyclopaedia.

I know Mr. Renwick wants to ask a question.

Mr. Renwick: I just wanted to ask Mr. Conway if he perhaps would suggest that the way in which that should come before us is that the representative from the Ombudsman's office who has been in charge of this particular matter could come before us with whatever documentation he has.

Mr. Conway: Ideally. I would be delighted if that could be arranged.

Mr. Chairman: There are two things. Do we want the documentation to be distributed and given to the members of this committee, or do we want, in addition to this, a representative of the Ombudsman's office to appear as a witness before this committee?

Mr. Conway: I certainly would suggest both if it's possible. They might be together. Obviously, if the people come they will have the file. I would like very much, if it is possible and acceptable to the committee, to have a representative, particularly the person at the Office of the Ombudsman who has been involved with these people, to appear before us to speak to the issue.

Mr. Chairman: Is it the wish of the committee that we request a representative of the Ombudsman's office to be available this afternoon to answer some questions that committee members may have and, if possible, to bring with him the file of documentation related to the particular issue?

Mr. Renwick: Just a very fine point: I don't like to use the word "witness" with respect to the Ombudsman or his office because the Ombudsman is an officer of this assembly of which we are a committee, so he is here in a different capacity from that of a witness. That's a very fine point, but I would like to make it clear.

Mr. Chairman: I would say simply to answer any questions the committee may have.

Mr. Renwick: And to bring with him whatever files and documents--

Mr. Chairman: Yes. Is there agreement or are there objections to this motion?

Mr. Dean: I just have a question, Mr. Chairman, as to how this will aid us in our main purpose, which is dealing with the proposed amendments to the act.

Mr. Chairman: I would like to point out that from the onset of the deliberations of this committee I have been very flexible in not ruling anything out of order that is unrelated to the particular sections of the bill under discussion. We have maintained that flexibility, I would imagine, beginning with the comments of the minister, who was not exactly addressing every particular section of the bill. I think we have maintained this flexibility, and I would like to remind members that I have never interfered in the remarks of the witnesses or in the questions by ruling them out of order.

Unless you wish me to change that procedure and to follow strictly all comments to ensure that they relate directly to specific sections of the bill--I certainly would be most willing to do it; it would certainly shorten the deliberations of this committee. But in light of the way and the manner in which this committee operated from the very beginning, I see no reason why we would have any serious objections to having someone from the Ombudsman's office present if the members of the committee would like that particular person to answer any questions you may have.

Mr. Dean: I do not know whether it is going to aid my perception of the value of the amendment, but maybe I'm just making too much of it.

Mr. Chairman: I have stated my position as to the way we have operated from the very beginning.

Mr. Lane: Mr. Chairman, just on a point of clarification I guess, I have no opposition to what has been proposed, and I have no desire to stem the work of this committee. But if we're going to start drawing in more people I feel that we should hear from the local fire authorities. Every witness who has been before us has been talking about the risk of fire, and yet we haven't heard from the fire chief or any of the local authorities.

A lot of reference has been made to correspondence and so forth that went between them and Mr. McMichael and other people. We haven't seen any of it. I would not be opposed to what is being presented here now, but if we are going to go beyond what we intended in the first place and see and hear more people, I think we should hear from the fire people.

Mr. Conway: My point, Mr. Chairman, is simply this--and this may help the member for Wentworth, who I don't believe was here the first day when we discussed with Mr. Taylor, the chairman of the board, the question of the board minutes. He made a very strong representation about those minutes and their release, and now we are told, as it happens, that an officer of this assembly has a file in which some of those minutes have been gathered. I think that is very relevant to the discussions of the principle of the bill, much of the testimony about the general relationship between the board and the community at large. That is my only interest.

Mr. Chairman: Mr. Conway, I would have to check Hansard, but I believe a question was addressed to Mr. Taylor as to whether or not he would be willing to provide us as members of the committee with any minutes of the board meetings, and I do not recall any negative answer on the part of Mr. Taylor.

Mr. Conway: He simply deferred to the minister.

Mr. Chairman: I may be wrong. He may have referred this to the minister, and I think the minister--

Mr. Conway: He took it under advisement.

Mr. Chairman: If we could solve this problem, if the information that members of the committee would really like to see is minutes of board meetings, and if the minister would consider this and perhaps make a decision as to whether we could have it--

Mr. Conway: My request is very specific. I would like, if possible, to call upon an officer of this assembly, namely, the Ombudsman, to come before us. I don't intend to start a protracted business. I would like to discuss with that officer the file that has been gathered by that office on this matter with specific reference to any minutes that that officer might have.

Mr. Chairman: I reiterate once again that we have had an official list of witnesses who have indicated their desire to

appear before this committee. I would hesitate if we double or start naming witnesses unless it is very important to the deliberations of this committee.

Mr. Lane, you mentioned the fire marshal and other people. I tend to agree that we should not now start creating lists of additional witnesses. The only reason, I understand, for the representative of the Ombudsman's office is that there is a relevant piece of information that the members of the committee would like to see. As I say, I will be guided by the wishes of this committee. I have explained my position and I cannot rule unilaterally but will be bound by your wishes.

12:20 p.m.

Mr. Pollock: I agree with Mr. Lane. I would certainly like to hear the testimony and comments of the fire chief from Vaughan township. They have been continually zeroing in on the fire regulations there and yet we have never heard from the fire chief. I find it kind of queer, if you want to use that word.

Mr. Chairman: We have an additional week for these hearings. If you want to continue, we could certainly sit for another four or five days and listen to a series of witnesses in addition to the fire marshal.

Ms. Fish: I recognize that the concerns about fire safety have been at the core of quite a bit of the discussion, but it does seem to me in recalling the exchanges and the information that has been presented that we have had pretty well presented to us already just about everything that could be presented.

What I would be prepared to do for my own sake in this matter is to have an opportunity of scanning back over the Hansard that is in front of us to see if there are other specific questions or points that are answerable only by the local fire authorities. My sense of it is that the subject, in so far as it would involve local fire authorities, has been fairly well canvassed. I would suggest that I do not think at this point it is necessary to have the fire authorities brought forward.

If some other members are concerned, then I would ask them to at least take the opportunity of the lunch break to perhaps peruse, once again, some of the Hansards and determine if there are specific questions that they feel were not answered, and we can deal with that question this afternoon.

Mr. Chairman: We have had a request from Mr. Renwick, which was addressed to Mr. Webber, to communicate with the Ministry of Industry and Tourism, to have someone available from that ministry to answer any questions. There is a second request to have someone from the office of the Ombudsman. Frankly, I do not see any serious obstacle in having these two people available, if the members of the committee would like to question them.

I would like to inform you of a "tragic" incident about the final witness for today--tragic in quotation marks. Mr. O'Donal has just suffered a back injury while shovelling snow. He is hospitalized or under medical observation and will not be able to

appear this afternoon. So this may give us some adequate time, following the questioning of Mr. Clague, to listen to any other comments and then proceed, obviously at your wish, with clause-by-clause discussion of the bill.

Mr. Edighoffer: If I could make a suggestion that might be helpful, Mr. Chairman, rather than invite the Ombudsman with his file and due to the fact that the minister previously undertook to consider presenting the minutes of the board to the committee, possibly we would not have to ask the Ombudsman to come, if the minister has now decided that he would present us with the minutes.

Mr. Chairman: I had a vaguely similar question posed to the minister. Mr. Renwick

Mr. Renwick: Personally, this was only one of the matters why I wanted to ask the Ombudsman's representative to come before us. It was not only for the purpose of the minutes, which may be a core part of it, but for other reasons as well. I do believe that the representative of the Ombudsman and indeed the representatives of the Ministry of Industry and Tourism are in a different category than witnesses from the public.

I do not have any firm view on Mr. Lane's proposal, but I do think it is separate and distinct from the other two. I hope we could agree on that and then perhaps go with Mr. Lane's request this afternoon as to whether or not it makes sense to invite the fire chief to come. Since I sense what Mr. Lane is saying is that the origin of this problem is with the local fire chief, there seems to me to be some merit in asking him to come. I am not asking him to come this afternoon.

Mr. Chairman: I do not know whether the fire marshal will be available at two o'clock.

Mr. Renwick: That is what I mean; that is another matter.

Mr. Conway: I just want to underscore my point, which is also in my own mind a matter of parliamentary privilege because, in my humble submission, it is now known that potentially very relevant information concerning the deliberations of this bill and this committee, which has been asked for and not yet acted upon, is both in the hands of an officer of this assembly and in the hands of some of the appearing witnesses. That clearly speaks to the broader question of parliamentary privilege. I would just underscore the peculiarity--

Mr. Chairman: If you want to take a vote on whether or not we should summon a representative of--you would not want to proceed to that degree.

Mr. Kolyn: I would be very supportive of Mr. Edighoffer's proposal. It seems like a reasonable compromise.

Mr. Chairman: There seems to be a general consensus to request, Mr. Minister, whether you would provide us with certain minutes--all the minutes of the board. Mr. Edighoffer, could you specify which minutes or from what date so that the minister can have a clear picture as to what documents you would like?

Hon. Mr. Baetz: Mr. Chairman, I said that I would take it under advisement. Mr. Taylor has left town. I do not know where he is today. London, I guess. Frankly, I have not had an opportunity to discuss this with him. I am sensitive to the fact that it is an arm's length agency and the minutes really belong to its board; they do not belong to my ministry. I certainly want to do what is appropriate. On the other hand, obviously, I want to and I suppose I must co-operate to the extent this committee sees fit in providing you with the information.

I would beg for a little more time to take under advisement the kind of minutes you feel you need for your deliberations here.

Mr. Conway: Might I, honourable minister, just remind you, in that deliberation of the clear statement of the chairman of the board recorded in Hansard of Tuesday, February 2, 1982. Reading from page four, Mr. Taylor said, "I would release them to the ministry." meaning the minutes, "They are available to the ministry at any time upon request. Then what the ministry may do with them by way of distribution is entirely in the discretion of the ministry. This is my opinion." I think Mr. Taylor is pretty clear on what he thinks of the matter. We would encourage you to--

Hon. Mr. Baetz: Will you extend my advisement period over the lunch hour? I will come back this afternoon.

Mr. Chairman: How do I proceed with your request, Mr. Conway, as far as the Ombudsman's office is concerned?

Mr. Conway: I think the minister has made a reasonable--

Mr. Renwick: I would like to see the Ombudsman's officer here. It is important that we know what the amount or the story is. I am not saying that he come this afternoon. My own sense tells me that we will complete our questioning of Mr. Clague and the matters that have been raised there after the luncheon recess. We have a number of requests before us and we also have to decide how we are going to complete our task. It seems to me that we are talking about completing it during those days which have been designated later this month.

Mr. Chairman: The third week of February.

Mr. Renwick: I think it was February 16 or something like that. It would, in my view, take the afternoon to complete the questioning and to sort out just where we now are.

Mr. Chairman: My understanding is that the presence of a representative of the Ombudsman's office was directly related to the questioning of our present witness, and my understanding was that Mr. Conway wanted him to be available today as part and parcel of it.

Mr. Renwick: Not necessarily.

Mr. Chairman: It is a question of just notifying them and he would be here. If there is no objection, I will ask the clerk to inform the Ombudsman's office to have a representative present here at two o'clock.

Mr. Renwick: No, I do not think--

Mr. Chairman: Do you want to leave that?

Mr. Conway: I think we might at this point just adjourn and think about it.

Mr. Chairman: We will take it under advisement, Mr. Conway. Thank you Mr. Clague. We will resume our questioning at two o'clock.

The committee recessed at 12:31 p.m.

A20N
C12
S78

S-6

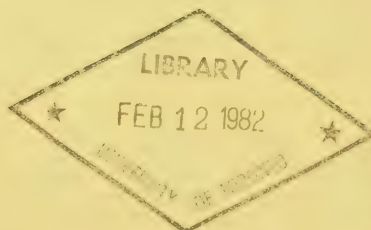
Publication

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

THURSDAY, FEBRUARY 4, 1982

Afternoon sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Shymko, Y. R. (High Park-Swansea PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Conway, S. G. (Renfrew North L)

Dean, G. H. (Wentworth PC)

Edighoffer, H. A. (Perth L)

Fish, S. A. (St. George PC)

Jones, T. (Mississauga North PC)

Kennedy, R. D. (Mississauga South PC)

Kolyn, A. (Lakeshore PC)

Laughren, F. (Nickel Belt NDP)

Renwick, J. A. (Riverdale NDP)

Roy, A. J. (Ottawa East L)

Clerk: Arnott, D.

From the Ministry of Culture and Recreation:

Baetz, Hon. R. C., Minister

Cornell, W., Deputy Minister

Noon, M., Director, Grants Administration Branch

Saxe, D., Director, Legal Services Branch

From the Ministry of the Attorney General:

Williams, F. N., Legislative Counsel

Witnesses:

From the Ministry of Industry and Tourism:

Baker, M., Director, Small Business Development Branch

From the Friends of the McMichael Gallery:

Clague, J. R., Executive Director

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, February 4, 1982

The committee resumed at 2:22 p.m. in room No. 228.

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT
(continued)

Resuming consideration of Bill 175, An Act to amend the McMichael Canadian Collection Act.

Mr. Chairman: I see a quorum and I call the committee to order. We will resume our meeting. We left off with Mr. Clague. I believe, Mr. Clague, you wanted to make a brief statement before the members of the committee question you further.

Mr. Clague: Yes. Thank you, Mr. Chairman. My apologies to the committee. One point that I did wish to convey in my earlier comments was that I too would support the statement made by two of the preceding witnesses before the committee, that despite the fact that Mr. and Mrs. McMichael may very well be continuing life members of the board of trustees, we suspect that their interests quite naturally would be more towards the management of the collection and the nature of the art works that are not necessarily aimed at the generation of public interest or relationship with the community.

Therefore, we would support very strongly the concept that the makeup of the board be re-examined in some form to include not only the local area which it serves, but perhaps the larger constituency of interest that has been expressed in recent months over the nature of the collection. While that may not be a direct part of the bill, we would seek the minister's consideration of that matter.

Mr. Chairman: As long as you do understand that it is not relevant to any section of the bill at present before us and would have to be up to the minister to consider.

Thank you. I do open up a list of questioners. Mr. Conway.

Mr. Conway: Mr. Chairman, I don't want to press the point, but when we adjourned at 12:29 it was the minister who was taking the 90-minute break, which is now 112 minutes, to decide upon what he might do with respect to various proposals concerning relevant material. The minister may have a statement. If he does, I will defer to him; otherwise I will proceed.

Hon. Mr. Baetz: Mr. Chairman, I think there were really two aspects to this question of the minutes. One was the question of whether or not, or how, the Ombudsman was treating the minutes that presumably he had received. The other was the question of my proposal for the use of past and future sets of minutes. There were two separate questions there. I don't know if over the noon hour

perhaps further information has been made available on the disposition of minutes going via the Ombudsman's office. I don't know, but if there is nothing further on that, I will be happy to express my feelings about having taken the suggestion under due advisement.

Mr. Chairman: I would like to inform you that I did not inform the clerk because the committee did not request me to seek representation from the Ombudsman's office.

Mr. Conway: Perhaps we can come back to that then when we have finished with this witness.

Mr. Clague, I want to go over a couple of points. I have noted you said that prior to last summer there was what you would describe as a symbiotic relationship between the gallery and the community out there. Are those fairly accurate representations from that point in the summer of 1981 through to the present in that it has been a ruptured relationship?

Mr. Clague: That's correct, Mr. Conway. I believe the description that I gave was that there appeared to have been almost an abrupt shift that seemed to be concurrent with the announcement of the closure of the gallery.

Mr. Conway: I am going to need your help with this, Mr. Minister. One of the things that this particular witness indicated earlier in his testimony is that this non-profit public interest group sought incorporation, I presume some time at the end of 1981, which was then objected to by the Ministry of Culture and Recreation, as I recall, about January 20, 1982?

Mr. Clague: On the exact dates, Mr. Conway. we submitted application through our solicitors on November 26. We received the notification of rejection based on the ministry's objection on January 25.

Mr. Conway: Perhaps the minister or his deputy would just speak to that point.

Hon. Mr. Baetz: Mr. Chairman, I would be pleased to and I would like to call on the ministry's legal counsel, Ms. Saxe, to speak to this point of incorporation.

Ms. Saxe: We did receive notice from the Ministry of Consumer and Commercial Relations in the middle of December that an application for incorporation had been received from the Friends of McMichael Gallery. We handled this in the way we handle all our applications for incorporation. We don't handle them very quickly because we have a very small staff and the applications are not top priority. We got it with a batch of about 15 others, which we circulated together around the ministry. Due to the Christmas break and the usual slowness of our circulation, we got the comments back in the middle of January and with our objections sent it to the Ministry of Consumer and Commercial Relations.

Mr. Conway: On what basis did you object?

Ms. Saxe: As Mr. Clague mentioned, we objected on three grounds. We objected to the use of the name McMichael Gallery, which we thought was confusing with the name of our agency, the McMichael Canadian Collection, without the consent of that organization. We objected to the fact that the objects of the corporation seemed very similar to those of an existing organization, namely, the McMichael Canadian Collection, so they would be likely to overlap with the objects of the latter organization and seemed very possibly to conflict with that organization, particularly in solicitation of donations.

Mr. Conway: Do you normally object? Would this be one of a very few incorporations in a similar area that you would object to? I just have no idea as to how many would fit in this general category.

Ms. Saxe: We get quite a number of them. I wouldn't think that we would object to more than a dozen in a year.

Mr. Conway: So I take it then that the minister would certainly deny the comment made by this witness that the 10-week delay and the ultimate objection were a matter of politics?

Hon. Mr. Baetz: Yes, indeed I would. I think as you heard, our opinion on it was based strictly on technical grounds.

Mr. Renwick: Mr. Chairman, if Mr. Conway would agree, I would ask Ms. Saxe a couple of questions about the process. Who would receive the notice from the Ministry of Consumer and Commercial Relations?

Ms. Saxe: My secretary receives them and automatically sends them to the part of the ministry she thinks should have them.

Mr. Renwick: To whom was this particular notice circulated?

Ms. Saxe: I believe this one was sent to the arts services branch, and we received their comments back in mid-January.

Mr. Renwick: Who was the person who would notify you of their objections?

Ms. Saxe: I get comments from the heads of the various divisions. In this particular case, I received a comment from Norman Best in the arts services branch. Based on those comments, I therefore prepare either an objection or a consent to incorporation.

Mr. Renwick: Would it be possible for you to isolate and put together in a file all of the documentation related to that process for this committee?

Ms. Saxe: We don't have any documentation. I can describe it. I can describe it orally or in writing as you prefer. We don't have a formal written process.

2:30 p.m.

Mr. Renwick: You have the notice from the Ministry of Consumer and Commercial Relations and you have the formal objection.

Ms. Saxe: We have the notice and we have our objection, which we type at the bottom of the notice. We can provide you with that.

Mr. Renwick: Could you provide us with the comments which were received in writing by you from whomever you circulate it to?

Ms. Saxe: If I have written comments, I am sure I can find them. I may have received them orally. I do not remember.

Mr. Renwick: Were you personally involved in this in any discussions with anyone other than the formal act of putting into words the objection?

Ms. Saxe: Yes, sir.

Mr. Renwick: Could you tell us whom you had the discussions with?

Ms. Saxe: I discussed it with the deputy minister.

Mr. Renwick: Would that be normal?

Ms. Saxe: Yes, sir. I would not object to something without advising the deputy.

Mr. Renwick: On any situation?

Ms. Saxe: That is right.

Mr. Renwick: Was it as a result of the discussions with the deputy minister that you filed the formal objection?

Ms. Saxe: I prepared the objection first, advised the deputy minister, as I always would when I propose to object to incorporation of the organization, and he reviewed the material.

Mr. Renwick: Did you meet personally with the deputy on this matter?

Ms. Saxe: I think so. Yes.

Mr. Renwick: Is that normal?

Ms. Saxe: I meet with him when I can catch him. Otherwise, I slip notes under his door.

Mr. Renwick: I understand that problem. He was always very co-operative with me. You actually met with the minister?

Ms. Saxe: Not with the minister.

Mr. Renwick: I am sorry, with the deputy minister.

Ms. Saxe: I believe I did.

Mr. Renwick: Perhaps, Mr. Cornell, you could pick it up at that point.

Mr. Cornell: I can just say that Ms. Saxe, the director of our legal services, did meet with me and explained--

Mr. Renwick: At her request?

Mr. Cornell: At her request. As I recall, there were three or four other items that you raised.

Ms. Saxe: I always have lots.

Mr. Cornell: She said, "Here are the comments," the ones she was making back to the Ministry of Consumer and Commercial Relations. I said, "Well, is that your recommendation?" to which she said, "Yes." I said, "Fine, go--

Mr. Renwick: Would you have any note of when that meeting was, Mr. Cornell?

Mr. Cornell: I am only guessing. It was about 10 to 14 days ago.

Ms. Saxe: Yes. It was in the second or third week of January.

Mr. Cornell: I do not mean to embarrass you, Ms. Saxe, but I may have asked why we took so long, because I like to think we are quick and speedy, and the main answer really was over the Christmas period.

Mr. Renwick: Did you have any discussions with anyone else, Mr. Cornell?

Mr. Cornell: No, none at all.

Mr. Conway: I just have a question, if I could, on this. I do not know if any of the three have spoken to this. One of the reasons for objecting has to do with the confusion you were concerned about, the possible confusion between the board, on the one hand, mandated to administer the gallery, and this public interest group, which was in a parallel way involved with the same public facility.

It seems to me, does that not happen in other areas where we have all kinds of institutions that have various auxiliary organizations that would provide you with all kinds of precedent to allow it in that sense? On the one hand, we have an administrative board to administer the thing and, in a sense, an auxiliary public interest group. Surely that must happen in a host of other areas with which your department has some involvement? Would you care to comment?

Ms. Saxe: I can only say that if we do get applications from organizations which come in without the support of the

organization to which they purport to relate, we are immediately concerned. If we get an application for incorporation from an organization which was confusing with another organization, we normally get the support of that other organization.

Mr. Conway: I may have missed this in earlier testimony, but are you saying that there was a clear direction from the board of the McMichael gallery that they did not view this as a helpful adjunct?

Ms. Saxe: No, sir. We did not consult them.

Mr. Conway: I got the impression, though, from your last answer that you were of a suspicion that this public interest group would not be favourably or well received by the gallery board.

Ms. Saxe: They certainly did not supply us with any evidence that they had obtained that consent which one would expect when using the name of a public organization.

Mr. Conway: You did not seek out someone at the board just to confirm that in your own mind since it is an obvious gap in the information?

Ms. Saxe: I believe, sir, that I was aware that the board had not been asked to and had not passed any such resolution. I also act for the board in certain capacities.

Mr. Conway: So it is obvious that you were aware that there was a tension, either extant or likely, between the board and the--

Ms. Saxe: Yes, sir. I do read the papers.

Mr. Conway: Thank you on that point.

Mr. Chairman: We have Mr. Conway who was questioning and a supplementary from Mr. Renwick. Have you finished your questioning of the witness, Mr. Conway?

Mr. Conway: Oh, no, I have a couple of other questions.

Mr. Chairman: You can proceed then with your questions.

Mr. Conway: By the way, Mr. Clague, any comments in respect to what you have just heard?

Mr. Clague: Only that we did include with our application for incorporation a deposition from Mr. Robert McMichael indicating his willingness to let the organization use the name McMichael in that we felt and were advised by counsel that was the governing issue in this particular case. The major point of confusion would be the use of the name McMichael, and we very carefully avoided utilizing the name that was suggested by the Klein and Sears report and indeed was endorsed by the board after its subsequent receipt of that report, "Friends of the McMichael Canadian Collection." We felt that would not be appropriate and would indeed be confusing.

We felt that the name Friends of the McMichael Gallery would clearly dissociate ourselves from the corporation. Therefore, we sought Mr. McMichael's approval and supplied his statement of permission along with our application to utilize his name.

Ms. Saxe: That was what I (inaudible). If we had an application for the incorporation of Friends of Robert McMichael we would not have been objecting on the basis of the name, but McMichael Gallery does not refer to McMichael personally.

Mr. Conway: But I take it from your earlier answer, Ms. Saxe, that on the basis of your reading of the public press you were aware of the tension that I spoke of, and that also you and the ministry made a judgement about the inappropriateness of the function that this public interest group was seeking to discharge.

Ms. Saxe: That is true, sir.

Mr. Conway: As a matter of policy, I find it rather interesting from the point of view of this committee that you felt this was a function that in the ministry's mind would not serve the public interest. On a matter like that, I have to wonder if the deputy--Did the minister involve himself on something of that?

Mr. Cornell: No.

Mr. Conway: Obviously, the deputy did. So the minister was not involved in that decision?

Mr. Cornell: No, not at all.

Mr. Conway: All right, I want to come back to another point that you raised in your testimony, Mr. Clague, and it has to do with this whole business about the architectural work. We have talked a lot about that in this committee and I wanted to perhaps ask Mr. Noon if he would come forward, with the chairman's approval, to just sort of clear up that point that was spoken of by Mr. Clague. While Mr. Noon is coming forward, I might ask you, Mr. Clague, do I understand you that according to the minutes that you have in your possession or information you have in your possession, the board delegated the architectural work, the selection process for that work, to a task force?

Mr. Clague: That is correct, Mr. Conway. It is our understanding that the minutes of the October 7, 1980, board meeting would show that any and all decisions of the November 6 task force meeting would carry the full weight of the board on the selection of architects and the appointment of a project manager.

Hon. Mr. Baetz: Mr. Chairman, could I perhaps interject here since Mr. Clague is referring once again to the October minutes, October 7 or 9, or whatever they were. Mr. Clague reported earlier on this morning that he had received copies of those minutes from the Ombudsman's office. I think I should report to this committee that I asked my legal counsel, Ms. Saxe, to contact the Ombudsman's office over the noon hour. I think it would be very relevant if at this point she would report what she was told by the Ombudsman's office, as far as these minutes are concerned.

Ms. Saxe: Yes, sir. I talked to the assistant director of investigations at the Ombudsman's office and he advised me that the Ombudsman's office categorically did not supply Mr. Clague or any other person with copies of any minutes of the board. He confirmed my interpretation of section 13 of the Ombudsman Act, which would forbid the Ombudsman from circulating documents of this kind except as a component of their report if they found it necessary. They have not yet prepared their report on this matter.

2:40 p.m.

Mr. Conway: Do you wish to respond to that, Mr. Clague?

Mr. Clague: Obviously, we have a problem in terms of the inner workings of government.

We met with a representative from the Ombudsman's office on January 6 in our offices. At that time the representative of the Ombudsman's office reviewed with us the contents of board minutes relating to the selection of architects, in that it applied to specific questions we have put to the Ombudsman for investigation.

We had similarly put those questions both to the board and to the ministry in previous submissions through the Kleinburg and Area Merchant and Tourism Association which had met with no response. Therefore, we requested the Ombudsman to investigate them. The information I am giving you is based on the notes that I took from that meeting. I, therefore, submit that it would be necessary, in order to corroborate or disprove the statements I am making here, to call forward the exact copy of those minutes.

Mr. Conway: The plot, like a good pudding, thickens.

Mr. Clague, I wanted to get in my mind the matter that you spoke to there, that the work was delegated by the board to a task force. At some point, Mr. Noon, it was suggested that you recommended that the tendering process be waived. Would you care to comment on that?

Mr. Noon: Yes, I will, Mr. Chairman. Mr. Clague refers to board minutes which may have reported that I recommended tenders be waived. I certainly would not use those terms because architects do not tender for a particular contract to undertake the design of a project. Tendering is done where there is selection on the basis of price, and I would not have used those words. If they were reported in the board minutes as waiving of tendering, what, in fact, I did recommend to the board was that Klein and Sears be considered to proceed with the work because I was most concerned, as a member of the task force, that we carry forward as quickly as possible with this project.

The Klein and Sears report had been reviewed by the Ontario fire marshal and by the Town of Vaughan Fire Department, and I was acting again on the basis of recommendations made to me by those two departments. I quote from the Town of Vaughan Fire Department: "I have no doubt that the present situation at the McMichael premises reflects the inadequacy of the facilities to provide reasonable protection from fire for the public, staff and the collection, as the Klein and Sears report notes on behalf of this department and other professional bodies.

"My concern, therefore, is that the report must not stagnate. I urge that all recommendations concerning fire safety, prevention and protection be implemented as expeditiously as possible"--and those words were underlined--"in order to provide for the safety of all concerned."

I was well aware that pursuance of the project by Klein and Sears was something that the board itself had to decide. I was also well aware that they had, throughout the feasibility study, reviewed the problems at the gallery, reviewed the requirements of the Ontario fire marshal, the Town of Vaughan Fire Department and other authorities. Their report reflected those requirements, and I felt that there was a stage there that would not require other architects to go back and review what had already been required by those authorities.

The board did not accept my recommendation. The board acted quite responsibly in proceeding to require that proposals be called from four architectural firms. I went into that yesterday, as far as the submission by the architects. They were not tenders.

To pick up on another of Mr. Clague's points, the submissions were made to my office certainly because the chairman of the board asked that my office act as their receiving point for those proposals. Also, because we are advisers to the ministry and its agencies where we are required, they asked us to provide a means of checking the proposals, a means of reviewing the background of the firms and the abilities of the firms because all the firms are equal, which we certainly did. The board itself made its own decision and it was not delegated to a task force to decide on the architects. The board voted on the choice of the architects and, as you recall yesterday, the choice was limited to a choice from three proposals, not the four that had been requested.

Mr. Conway: Do I understand your allegation or your statement, Mr. Clague, earlier to have suggested that the Klein and Sears feasibility study, that first study that you read from, scarcely mentioned--or I think you said it did not at all mention--fire safety and it mentioned safety on a "p" priority. Have I got the right report there? The first Klein and Sears report. Is that the one you read from?

Mr. Clague: What I read from, Mr. Conway, to avoid confusion, was documents provided in a special report by Klein and Sears to the board of trustees dated July 1981. It included in it as appendix B copies of a document entitled, Terms of Reference and Study Guidelines for a Feasibility Study on Capital Expansion.

Mr. Conway: Certainly the impression you left with me was that in their report, prior to the major report that they were commissioned to do--

Mr. Clague: Mr. Conway, perhaps we are confused. These terms of reference that I read from would have been the governing terms of reference for the study that Klein and Sears ultimately did.

Mr. Conway: That's right. They were not part of that major study. They preceded it.

Mr. Clague: That's correct.

Mr. Conway: One gets the distinct impression from what you tell us that in reading that there is not an obvious concern about fire safety and in fact, safety as a general category comes by your description down the list.

Mr. Clague: That would be my interpretation.

Mr. Conway: I wanted to get Mr. Noon or someone. Mr. Noon, how do you generally respond to that?

Mr. Noon: Mr. Chairman, I would be very glad to respond to that. The terms of reference for the study were drawn up because the board decided that they should proceed with a feasibility study only at the time that Mr. McMichael himself had requested that an expansion of the gallery be done. At the same time we were well aware by the intervention of the Ontario fire marshal that there were problems with the building. Any such study that the board wished to commission in connection with any expansion, we recommended, and certainly the board readily agreed, should also comprise a study of the adequacy of the present facilities. Mr. Clague very adroitly, in reading from the terms of reference which were encompassed in the July 1981 report, stopped in his list and did not proceed with the following under item five.

It says: "The study should include reference to all areas of shortcomings of present buildings which cannot be corrected within it, the existing proposed plan, the codes and standards regarding Ontario fire marshal's office, Ontario Hydro, Ontario building codes, et cetera, and the town of Vaughan."

It was as a result of this review that the Klein and Sears report, which resulted from these terms of reference, revealed that the existing building potentially had a hazard as far as fire safety was concerned. It was not the primary focus of this study. There is certainly no question of that. The study resulted from a desire to expand the building, but we were all very conscious and the board was very conscious that there were hazards already identified.

Mr. Conway: I think, Mr. Noon, that may be just the point. Again, one has to play the role of sort of the independent person looking at this. Fire safety was not the primary focus, but in retrospect when one looks at what happened, certainly it seems to have been the point in subsequent discussions. Certainly those in authority went to great pains to point out that this was, not a fire trap, but maybe close to a fire trap, and yet at the beginning of this process even you admit that it does not appear to have been the primary focus.

2:50 p.m.

Mr. Noon: I admit, and I go back to your question of a couple of days ago, that anyone walking into the building might have realized this. I think that without the proper research, which this study encompassed, the extent of the problems was not identified and could not have been identified.

I have to go back also to the question of how did this all happen? Why was the building in such a state? As has been pointed out before, when the Klein and Sears feasibility study came out and these hazards were identified my staff did a review of the drawings that were on file with the building department and that were resting with Klein and Sears, which had been handed over by the collection. It was very clear that the drawings did not reflect the building as it now stands because changes were made, obviously, during construction. The drawings themselves, which are supposedly the documents by which permits are given, were marked, as I mentioned the other day, "Approved as noted and subject to the national building code." A review of the code in effect at that time indicates that in fact the buildings were not in accordance with the code.

I give you one example. I have here an extract from one of the drawings. We mentioned the restaurant earlier in this session. The approved drawing resting with the building department shows the restaurant in one location in the basement and an office area in the other half of that basement area. The drawing, as I say, is approved as noted, and it does say all construction is to comply with the applicable requirements of the national building code. It appears that during construction the locations were switched. The restaurant was moved to the front half of the building and a kitchen was added, the office area became the boardroom and a corridor was added. All these changes appear to have been made without any approvals.

Mr. Conway: But it is little comfort to some of us, Mr. Noon, to hear--and I appreciate what you have just told us--that the deputy told the committee yesterday that there is no provision, there is no mechanism in the department, to see to it that these kinds of things are monitored from time to time. One does recall that this was a public building in right of Her Majesty--whatever the legal term is--for 16 years. In fact, there had been a board appointed by the government for nine years. I just sort of say to myself, "Well, there is no mechanism in the department; there doesn't seem to be any kind of agency that would pick up on these things." We thank, I suppose, the haphazard or accidental situation--whatever--that triggered the whole thing. But one wonders how many other places there are in this area where the same kinds of situations might obtain.

Mr. Noon: As I said yesterday, the mechanism does exist through the Ontario Building Code and with the local authority, the building department, if the buildings are built not in accordance with those codes. It is possible that some have not been. It is fortuitous, I think, that in this case it has been revealed and the deficiencies are being corrected.

I think I answered the three points that came up.

Mr. Clague: Mr. Chairman, if I might interject at this point, in response to Mr. Noon's comments, he would imply that there was selective reading on my part in reading out the terms of reference. I believe the transcript will indicate that I was indeed going to be selective in my reading. However, the portion that I read you, which listed safety as item (p), was out of a description

of terms of reference applying to the existing building. The section five that Mr. Noon has just quoted is a section relating to new buildings. One would hope that any new building that was put on would indeed be viewed in terms of existing codes.

Mr. Noon: If I may respond to that, and I repeat what I just said, under that heading it says the study should include reference to all areas of shortcomings of present buildings.

Mr. Conway: All right, I'm going to pass. I just have one last question for Mr. Noon. He has been helpful in expressing views on some of these matters. Mr. Clague quoted--and I presume I correctly quote you, Mr. Clague--that Mr. Sears said on that tour, which I was completely unaware of yesterday in my discussions with my friend from Mississauga, for which I will be endlessly apologetic, that "hazardous is not a definitive word." I think that's what you said, Mr. Clague.

Mr. Clague: That's correct.

Mr. Conway: Mr. Noon, do you think that "hazardous" is not a definitive word?

Mr. Noon: I don't think I would like to comment on Mr. Sears's definition of "hazardous." All I can comment on is the advice given to the ministry at the request, and that is from the Ontario fire marshal and from the Town of Vaughan Fire Department.

Mr. Conway: Before I turn it back, Mr. Chairman, I just want to conclude that earlier point with the deputy and with the minister because this question of the ministry's intervention on the incorporation of this public interest group bothers me. It bothers me a little more since my learned counsel, sitting to my immediate rear, informs me that there are things like the Canadian Broadcasting League and Energy Probe which are very much in this tradition, presumably doing an important job.

I'm concerned about the intervention. I'm concerned that the impression could very well be left with people that it was a matter of politics, that the last thing the government wanted was a bloody public interest group out there stirring up the debate in a way that might not be considered helpful by the powers that be.

I'm also concerned, quite frankly, that the minister did not make that judgement. Not that I have any problems with the deputy's involvement, but I think that that's a fairly significant, highly sensitive, policy decision, given this subject at this time involving this group. I would just say that. Perhaps we can return to it in the clause by clause or summation.

Hon. Mr. Baetz: I could hardly make a judgement if I were not aware of the details.

Mr. Chairman: Before we proceed, Mr. Renwick, because of the nature of comments that have been expressed before this committee, I would like to inform both the witnesses and the members of the committee of any serious breach of the procedure. I

would like to quote from Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, chapter 25, dealing with witnesses in Parliament: "Witnesses who give false evidence or attempt in any way to deceive a committee are reported to the House to be dealt with as may be determined."

I have a copy of Hansard, a question by Mr. Conway, addressed to Mr. Clague.

Question, Mr. Conway: "So the Office of the Ombudsman has furnished you people or the Kleinburg group with some extracts of the board's minutes." Answer, Mr. Clague: "That's correct." Perhaps we need some further explanation as to the record in Hansard and the statements you have recently made of an explanatory nature.

Mr. Clague: Mr. Chairman, as I indicated earlier, on January 6 we had a meeting in my office with a representative of the Ombudsman's office, who at that time reviewed with me the results of that individual's investigation of board minutes of the McMichael Canadian Collection. The comments that I reflected to Mr. Conway are based on that discussion and on the transcript that I made as a result of that discussion.

Mr. Conway: I think that's certainly a helpful clarification. I certainly don't want to create a too highly charged atmosphere in this connection.

Ms. Fish: Mr. Clague, if I may, so that I understand it, I did come away from this morning's exchange as, frankly, I think perhaps you did, Mr. Conway, under the impression that you were saying that the Ombudsman's office had given you copies of minutes, and I thought that you were indeed referring to copies of minutes, or extracts of minutes, of about four board meetings that I thought you were saying you had in front of you, and that you had read excerpts from only two of them. That certainly gave me some considerable cause for concern, as I believe it did Mr. Conway, on the matter of privilege.

Do I infer correctly that you are saying no, you were not given extracts of the minutes in hard-copy form and that the only thing that you were reading from was your notes made of an oral discussion? Is that correct?

3 p.m.

Mr. Clague: Yes. I would like to clarify that I did not receive printed copies of the full board minutes from the Ombudsman. What I did receive from the Ombudsman was readings by the Ombudsman's representative to me of her investigative statements which she had then recorded from the board minutes.

Ms. Fish: Did that involve some sort of dictation to you of certain of the board minutes or something that you were taking notes from?

Mr. Clague: Perhaps I could describe the process and that might clarify it. We had asked a series of questions of the Ombudsman's office relative to board procedures. We had also

requested copies of board minutes in those regards. We had been denied copies of board minutes, as indeed has this committee so far. We then were visited by the Ombudsman's representative saying: "We have inspected the board minutes on the issues that you requested us to. These were our findings in reviewing the board minutes. The board minutes said the following"--the notes that I read out here, the transcriptions that I made as a result of those statements read to me by the Ombudsman's agent.

Mr. Conway: Mr. Chairman, just on that point, I think you are doing just a swell job here, but since 2:20 I have been told the following: You did not instruct any staff to contact the office of the Ombudsman. The legal counsel for the ministry did. You have also indicated--correct me if I am wrong, but I thought that's what you indicated--that staff had not made a contact with the office of the Ombudsman since we were anticipating developments this afternoon. We know that the ministry did though. We know that the legal adviser to the ministry did. Somebody has made it their business to go and to get the tape of this morning's Hansard, transcribe it or at least somehow procure it and busy themselves with an interpretation of Erskine May. On the face of it, one gets a worrisome impression. I just leave that with you.

Mr. Chairman: First of all, there is no impression of any tendency. It is my responsibility as chairman and I think the responsibility of every member of this committee to be very clear as to what is transcribed and the evidence that is given. We were faced with a statement by the ministry's counsel that in fact the Ombudsman's office did not provide any copies of minutes of the board. That statement was made before this committee. There had been an earlier statement apparently made which is my responsibility to verify and it is only proper that you be informed--

Mr. Conway: I just note the chronology of events here, and like Caesar's wife--

Mr. Chairman: The chronology of events is that after the statement of the counsel I asked the clerk to simply provide a copy of Hansard so that we would be sure there would not be any indication that there is false information, and the explanation certainly presented by Mr. Clague is that apparently there was no false information presented before this committee.

Mr. Clague: I would hope that has been clarified.

Ms. Fish: (inaudible) misunderstanding in interpreting remarks and I think it is perfectly appropriate that we have it clarified because, as I said, I very much share my colleague's concern about the possible question of privilege.

Mr. Conway: The chairman has just indicated he did not contact anybody at the Ombudsman's office. We learned this afternoon that the legal affairs person at the ministry did. I presume that in anticipation of some of that somebody went to a lot of work over the noon hour.

Mr. Chairman: The clerk informs me that a representative of the Ombudsman's office did approach him.

Clerk of the Committee: It was after the start of this afternoon's meeting that a representative of the Ombudsman came into the committee room and motioned to me to step outside of the committee room to discuss what had been said this morning.

Mr. Conway: This is a committee room of such fascinating body language and quarter-backing that I can't resist observing a certain very, very impressive bit of homework that was done over the course of a very short time.

Mr. Chairman: You are complimenting the committee on--

Mr. Conway: I certainly compliment the chairman on his industry.

Mr. Chairman: Can you proceed with questions?

Mr. Conway: I am finished. Thanks, Mr. Chairman.

Mr. Renwick: I have a couple of specific questions, a couple of general questions, and that is all. I hope I will not take up too much time. I do think the letter which the witness has referred to with respect to Mr. Roberts' clarification of the nature of the collection is very germane to our discussions, and it is a document of which I was not aware. Could we have a copy of that as an exhibit to the committee?

Mr. Chairman: Could we have a copy of this distributed to all the members of the committee? Who has the original? Do you want to table this?

Mr. Renwick: This is a copy of this.

Mr. Chairman: Did you want to table this before the committee?

Ms. Fish: It is a copy.

Mr. Renwick: I am quite happy with a copy. I am not asking for the original. It will probably be 25 years before it will be allowed to be published, I would imagine. A copy of the copy of the original.

Ms. Fish: If a copy is widespread as Mr. Clague was reading from as he was providing some of his thoughts and advice to the committee, then surely that is perfectly appropriate.

Mr. Renwick: The other matter which I had in the back of my mind since the minister's original statement, and I have intended to ask about as Mr. Clague has refreshed my mind about it, is that nowhere have we seen what these nine points were with regard to Mr. McMichael, while he was still the director and appeared before the board in June 1981, just before Mr. Bell's effective appointment on July 1. In your statement, Mr. Minister,

you referred to two or three of them and from time to time they have come up, but I have never understood what the nine points were. Were they in document form that Mr. Goodman presented on behalf of Mr. McMichael?

Hon. Mr. Baetz: They were certainly written and then spelled out. Yes.

Mr. Renwick: Knowing Mr. Goodman, I assumed that would be so. Could we have a copy of those for the record?

Hon. Mr. Baetz: Yes. I do not have them with me at this moment, but I am sure we can furnish those.

Mr. Renwick: There is no rush about that. I just want to tidy up, if the deputy and Ms. Saxe will allow me to. Do you, on all occasions, speak to the deputy about objections to names of organizations?

Ms. Saxe: It is my practice to do so. Yes.

Mr. Renwick: It is your practice on each case to get the approval of the deputy?

Ms. Saxe: I advise the deputy before I send the objection.

Mr. Renwick: Before you send the objection?

Ms. Saxe: Before I send the objection, whether in writing or in person.

Mr. Renwick: Mr. Cornell, you said the director of the legal branch had other matters that she wished to discuss with you that day?

Mr. Cornell: As I recall it, yes.

Ms. Saxe: I always go in with a list.

Mr. Renwick: Could you repeat for me the exact reason for objection to the name?

Ms. Saxe: I do not have my objection here, but as I recall the way I phrased the reason, the objection to the name was that it might be confusing with the McMichael Canadian Collection which was our agency and that name ought not to be used without consent of the McMichael Canadian Collection.

Mr. Renwick: Without the consent?

Ms. Saxe: Yes.

Mr. Renwick: I was just trying to say I would not have found it confusing. I never find it confusing, for example, to distinguish between Mr. Laughren and the friends of Mr. Laughren, if there are any.

An hon. member: I am sure there are.

Ms. Fish: There is a difficulty.

Mr. Laughren: He is just mad because they are not his friends too.

Mr. Renwick: In his case, it may have to be singular.

3:10 p.m.

Ms. Saxe: We felt that it could give rise to a public impression that this organization was somehow affiliated with the McMichael Canadian Collection.

Mr. Renwick: I again express a certain degree of incredulity about that. Was the consent then forthcoming from the McMichael Canadian Collection?

Ms. Saxe: I am not aware of it having been requested.

Mr. Renwick: I suppose we could go into that forever.

Mr. Laughren: Would you allow a brief supplementary?

Mr. Chairman: Certainly, Mr. Laughren.

Mr. Laughren: I don't quite know how it works, but when you issue your objection based on the possibility that it might be objected to by the McMichael Canadian Collection--

Ms. Saxe: No. Our objection was not that it might be objected to by the Canadian collection, but that it was confusing with their name and that certainly the name should not be used without their consent.

Mr. Laughren: Right, but then you don't take it upon yourselves to obtain that consent. You just let it hang there, do you?

Ms. Saxe: We don't think it is our job to obtain the consent. We are asked by the Ministry of Consumer and Commercial Relations. We respond directly to them. If the consent was to be obtained, I should think it would be the responsibility of the organization who wishes that consent to obtain it directly.

Mr. Laughren: Even though you have objected to it because it might be objectionable.

Ms. Saxe: We think it is confusing.

Mr. Laughren: It seems to me that you are taking a lot upon yourselves to assume that they wouldn't want it to be known that there were friends out there of the collection and it seems like a strange process.

Mr. Renwick: Mr. Clague, did you finally have to obtain the consent of the McMichael Canadian Collection to the incorporation of the Friends of the McMichael Canadian Collection?

Mr. Clague: Having been advised by our counsel last Tuesday that the application for incorporation had been rejected and in preparation for these hearings, we simply have not pursued the matter beyond receiving the notice of objection. We will however be pursuing it and attempting to clarify the confusion.

Mr. Renwick: Could we put on the list of odds and ends that we have to clear up a request that someone from the companies or corporations branch of the Ministry of Consumer and Commercial Relations come and explain to us the basis on which the application was rejected for the incorporation of this organization?

Ms. Fish: Mr. Chairman, if it is appropriate to deal with it, I am prepared to deal with it a little bit later, but I must say I do think that is perhaps stretching the question of the bill that is before this committee for consideration to really rather an extreme point. I am quite happy to engage Mr. Renwick in that conversation later on this afternoon, but I would offer the thought that really is going quite a bit farther than one could conceivably interpret the bill before us to involve the committee at this time.

Mr. Chairman: The incorporation of an organization of the nature of the Friends of the McMichael Gallery has nothing to do in terms of relevancy with the sections of the bill before us.

Mr. Renwick: Before you make your decision and without enlarging it, perhaps a simple request would produce the answer to it. I recognize that relevancy is always a matter of judgement, but when a witness has appeared before the committee, it is evident that the ministry has objected to the incorporation of the organization which is directly concerned with the future of the McMichael collection. When we find that the ministry has objected subject to them getting the consent of the McMichael Canadian Collection and then we find that the Ministry of Consumer and Commercial Relations has rejected the application, it leaves unanswered in my mind whether or not the McMichael Canadian Collection was asked for their consent or what the basis of the rejection was.

Ms. Saxe: Mr. Renwick, perhaps I can clarify that the objection to the name was only one of three grounds of objection and the other two did not refer to the consent of the McMichael Canadian Collection.

Mr. Renwick: I suppose if the committee doesn't want to do that, if Mr. Clague is agreeable, I can perhaps discuss it with counsel for the applicant and find out the expressed basis of the rejection of the application and I could raise it again if it was appropriate. You see I am very co-operative this afternoon.

Mr. Chairman: As we all are.

Mr. Laughren: Don't push him.

Mr. Renwick: There are two major areas I want to speak to. I appreciate that because in all of the controversy or cloud around the McMichael foundation we would have missed some aspects of the significance of the special fund. The ministry has heard the

comments of Mr. Clague about the special fund. I just want to refresh the minds of the members of the committee by reading from the annual report of last year for the collection. In the notes to the financial statement on the collection it states:

"The special fund consists of: (1) all moneys received by the corporation expressly for allocation thereto; (2) all moneys received from the sale of any art work belonging to the corporation; (3) all net profits from the sale of books, art reproductions, copyrights, artefacts and other wares by the corporation; and (4) the income of the special fund."

Then it goes on to state: "The corporation may not expend any of the moneys in the special fund except for investment in classes of securities which trustees are permitted to invest in under the laws of Ontario or for the acquisition of art works and objects for the collection."

Would the ministry, perhaps for the first time, give some explanation as to the reason why it is intended to abolish the special fund?

Hon. Mr. Baetz: Mr. Chairman, I would ask our legal counsel, Ms. Saxe, to speak to this.

Ms. Saxe: Mr. Renwick, if you have looked at the bill, you will notice that we are not repealing the special fund. Mr. Clague, obviously, has not examined the bill.

What we are repealing is the section which requires the gift shop proceeds be paid into the special fund. All the remaining provisions, the provisions of cash gifts remain in the special fund. Money resulting from the sale of art works should be paid into the special fund. The restrictions on the use of the special fund, which is only for investments or for the purchase of art works, those will all continue.

The reason for deleting clause (c) of section 9 is to permit the collection to meet some portion of the costs of the current renovations. Since they do not charge admission they had no other method of raising funds.

Mr. Renwick: I always hate it when the minister diverts my questions to a confrontation between two lawyers on the minutiae of this bill.

Mr. Conway: This one sounds like it could be sharp and precise.

Mr. Renwick: Perhaps the minister could answer what the reason for deletion of item (c) was?

Hon. Mr. Baetz: I would again defer that to Ms. Saxe.

Ms. Saxe: As I just mentioned, the purpose is to allow the collection to meet some portion of the costs of the current renovation program. It is not the practice of the government to fully fund any capital program for any of its agencies, without requiring that agency to come up with some portion of its own funds.

As the McMichael Canadian Collection has no members, does not charge admission fees and has no other ways of raising money, its only other source of income other than donations, which of course, we would not want diverted to this purpose, is the gift shop. They have approximately \$500,000 in that gift shop fund that has accumulated over the years which the collection proposes to use to pay for a small portion of the renovations.

Mr. Renwick: Perhaps we can come to that at the time when we are discussing it. I would like to have the financial accounting for the net profits from the sale of books, art reproductions, copyrights, artefacts and other wares by the corporation so that we get some sense of the quantum of the deletion which is going to be made from the special fund.

3:20 p.m.

Ms. Saxe: I should point out again, sir, as you know, the fact that the deletion of this clause will not prevent the collection from using money from the gift shop for the special fund in future; it simply doesn't require them to do so. I am sure Mr. Bell can supply any financial statements you require.

Mr. Renwick: Perhaps you can take note of my request for the dollar amount and we can deal with that when it comes on.

The other question is quite an open-ended one. Could you give us some indication of what steps you think, Mr. Clague, the ministry, the collection and the merchants in the area, what sort of program do you see should be put in place in order to repair the breach of relationship between the community and the collection?

Mr. Clague: I think, Mr. Chairman and Mr. Renwick, some initial steps would involve some exchange of information freely between the gallery board, the gallery staff, the ministry as appropriate, and the various constituencies that have been identified in a form of the business association in the area, the Friends of the McMichael Gallery, or whatever name we ultimately end up with to satisfy the government for incorporation purposes, and any other group that identifies itself as being interested in the future of the gallery; that rather than procrastinate on the development of things like a liaison committee, which was promised to the community, for example, by the board back in July and which has never materialized, some direct action be taken at this time; that dialogue be opened very clearly; that formal relationships be indeed drawn between these various organizations.

I would think from the business standpoint, although Mr. MacEachern may be able to speak to this more directly than I, that the businesses in the area would want very clear indications from the board and the ministry and the architects and project managers as to the stage of construction and anticipated opening dates; that they would want information from the board and the ministry as to what plans for promotion and announcement of the reopening of the collection are anticipated, and to be very heavily involved in that; that that program be instituted immediately in line with the recommendations of Touche Ross and Partners; that rather than be in an unknown state--and, as described in the Touche Ross report, a reactive one--it be a proactive one, that it be anticipatory and that it begin immediately.

I would think that in terms of a relationship with the larger public interest, and particularly with the interests of our organization, approaches should be made to our organization by the board indicating their willingness to discuss ways in which we can be helpful to each other. We understand that one of the concerns that was raised relative to our incorporation is that some of our activities appear to conflict with those of the collection with respect, for example, to the solicitation of donations. Since many of our members are large donors to the corporation, we would like to clarify what problem there might be. Since it would be our intent to work with the gallery in such a way, or with the collection corporation in such a way, that if they identified the need for funds for a specific purpose--a specific acquisition or whatever--we might be helpful to them in securing those funds.

But I think the initial stages are to sit down and to negotiate working relationships. I would suggest and submit that those working relationships start on very tender ground and that at this moment it will require, frankly, in my opinion, an extraordinary effort on the part of the board, the staff and the ministry to indicate their willingness and desire to be so involved. We would state categorically from our standpoint in our organization that we would be very prepared and very happy to do that. We would like to reduce rather than increase the frictions that exist. We would like to see that ongoing working relationships and communications are made further.

We would suggest to the minister, as I indicated earlier, that he introduce amendments to this legislation, whether now or at a future time, which would include the opening of the board meetings to the public, except for specifically sensitive issues; that the minutes of the corporation be a matter of public record, as we have been assured by the Premier's office and the Attorney General that they now are. We have heard no evidence to the contrary to dissuade us from that belief and, therefore, we feel that if necessary we incorporate that provision in statutes so that the public is clear on what is happening on a regular basis as opposed to annual report that appears once a year;

We suggest that the locations of the board meetings be in the gallery proper rather than the offices of Canada Trust, Crown Life or other private locations, in which they have been held through time, which are even less accessible to the public even if their meetings were available to the public. We would suggest that membership of the board be clearly examined by the minister, as we have already suggested. As a matter of fact, it would seem at this point, since you have asked for an opinion and a recommendation, that the present legislation may very well represent an interim move in terms of the nature of the collection, its relationships, the board's responsibility and so forth.

It would seem that some of the issues that have been raised in the past few days would indicate that the changes that are needed legislatively are far broader than those which have been contained in this particular bill. So it would seem that we have relationship questions and we have legislative questions that need to be resolved.

Mr. Renwick: Perhaps my question was too open-ended. I appreciate your remarks, but what it was really directed to is this: If I could ask you in your professional capacity, divorced from your relationship with the organization, do you believe, with your knowledge of what has taken place, that it would be possible to put together a program within the next short period of time that would by June 1 have gone a long way towards solving the relationship, given four months to do it?

Mr. Clague: I believe it would be possible. It would require a great deal of energy and I think all parties would have to be prepared to live through a certain amount of testing of the level of trust that they could expect from each other.

Mr. Renwick: I guess the last part of that was simply, recognizing the deterioration in the relationship, is it possible, Mr. Minister, with some goodwill on all sides, that an immediate step could be taken to develop the plan for the reopening of the gallery at the early part of this year in such a way that you would have the co-operation of all interested parties?

Hon. Mr. Baetz: I think you mentioned earlier that you had a very open-ended question, and we got a much more open-ended response. Even though your last question is more specific, it is still somewhat open-ended. I want to comment that I certainly can endorse the spirit of the comments made, both implicit in your question and certainly expressed in the response.

I hark back to what Mr. Taylor said yesterday or two days ago that he, too, is anxious to heal any divisions, bridge any gulfs that have been created between the McMichaels and the board, and I am sure I can speak for him that he would want to do that in terms of restoring bridges between the gallery and the community. I do not want to respond any more specifically than that but I am sure we could all share in that spirit.

I also feel that some of the more specific suggestions that were made really are not appropriate to be enshrined in legislation. I think it would be more appropriate to deal with some of these issues in a memorandum of understanding between the ministry and the agency itself, but I want to assure you, Mr. Renwick, Mr. Clague and others who have an interest in this, that obviously it is in everyone's best interest that the collection lives in total harmony with its immediate environment. It has to do that, and we will strive to do that.

3:30 p.m.

I think at the same time the members of the immediate community of Kleinburg have to also recognize that this is not only a local gallery, it is a provincial gallery; it is a national gallery; it is an international gallery. There may be from time to time some feeling that because it does have that kind of status, it has somewhat grown beyond the local environment. You are going to run into that, but I am very confident in speaking to members of the board and speaking to others that we are embarking upon an era of much greater harmony. I feel confident that in a year from now

when the gallery is fully reopened and it is a safer and better gallery than it has ever been, we will look back with perhaps some smiles as to what has transpired over the last year or so. So I am very very optimistic about the future.

The whole question about membership of the gallery was raised yesterday. I would certainly think this is something that is worthy of looking into, whether it's friends of the gallery or friends of McMichaels or friends of whatever. Obviously, if there is a large citizens' group out there which is interested in the gallery and is prepared to support it and prepared to promote it and prepared to do this and that, why shouldn't we--all of us jointly--harness that kind of goodwill that is there? We are prepared to do this.

Mr. Conway: Specifically, Mr. Minister, would you then consider re-evaluating the ministry's objection to the incorporation?

Hon. Mr. Baetz: As I think became apparent here, to date I have not been informed on the details of that original application. So I don't want to comment specifically on that particular issue. But I do want to express my full support and the support of the ministry and of the government, I am sure. We have to heal whatever wounds that have occurred and build whatever bridges need to be built and rebuild bridges that maybe have collapsed. This gallery is, like all healthy galleries, a living institution and if it's a living institution, it changes constantly. It goes from one age and stage to another and I think along with it, certainly there have to be changes made.

Mr. Renwick: Mr. Minister, my comments are to the more urgent question of the Touche Ross report where it states in its conclusions: "Most businesses will survive and area merchants are basing their short-term strategies on the premise that the McMichael gallery will reopen in the spring of 1982." Then it has certain recommendations with respect to that.

The implementation of those recommendations requires the co-operation of all of the parties. Do you think it is possible, under the leadership of the ministry, to put together the marketing plan developed in consultation with the area merchants with a sense of urgency about it so that as the gallery begins to be reopened in the late spring or early summer, the working together in the development of that plan will have of itself done much--

Hon. Mr. Baetz: Surely.

Mr. Renwick: --to eliminate the bad feeling and to restore the sense of concern. I take Touche Ross to be politely saying that these businesses can probably survive until the spring and the summer time. They certainly can't survive very much longer.

Hon. Mr. Baetz: Mr. Chairman, I understand that the representative from the Ministry of Industry and Tourism is now here and he can speak to this specific report, but I just want to again say in a somewhat broader way that certainly my ministry and the Ministry of Industry and Tourism are increasingly working very closely together.

We all recognize that a very large aspect of tourism in this province relates very directly to the great arts institutions that have developed here, whether it's Stratford--I know Mr. Edighoffer wouldn't want me to miss the opportunity of mentioning Stratford--whether it is Shaw, whether it is Kleinburg, or whatever; you could go right through to the Centre in the Square in Kitchener-Waterloo. What you have now is a whole network. Which one did you say?

Mr. Conway: To say nothing of Chesley.

Hon. Mr. Baetz: Chesley, yes, of course. A whole network, a whole constellation, of great arts institutions. Certainly they are very much a part of tourism, and also increasingly it is recognized--and I say thank goodness for it--as being a major part of the economy. Mr. Edighoffer remembers very well that a year and a half ago it looked as if Stratford would not have a festival at all. In the first instance, it was not only those people who were interested in having a full artistic season there and not missing their famous festival, but it was the businessmen, the mayor, the merchants, and the hotel and motel keepers of Stratford--you will remember this very much, Mr. Edighoffer--who said, "For God's sake, this cannot happen."

Increasingly, there is this recognition that art, if you want to use the crude word, is a cultural industry, and it is very important. We have the same kind of sensitivity to what is happening in the Kleinburg area.

Mr. Renwick: All I wanted to say was can you tell us, under the leadership of your ministry, or joint leadership of the two ministries--Industry and Tourism, and your ministry, sir--is it possible to establish, as a matter of urgent priority, a working group, or a task force, or an advisory committee, or whatever it is, which would involve, as integral members of that working group or committee, representative persons from the community and merchant area of Kleinburg to try to work towards whatever the process is that the Touche Ross report speaks to?

Hon. Mr. Baetz: Yes, I see no problem in doing that at all. There is a good deal of planning and thinking that has gone into that even up to now. I see no difficulties there at all.

Mr. Conway: I am always impressed. You are just marvellous. You send out a great Te Deum of praise to this cultural facility and its future. I agree. As is your usual wont, you do it with compelling effect. But I want to bring you down from that great speech, and say, Mr. Minister, having offered the olive branch, having spoken of the future, you have this group and they feel very much disadvantaged by your intervention in this matter. You have indicated that you have not personally involved yourself. I would hope that you would give an undertaking to get together and look at this problem and see if there is not some way around the kinds of legal matters that seem to trouble your staff.

We have been told by a number of people--certainly by this group--and the impression has been left with others, rightly or wrongly, the impression has been created and left by the ministry that you really do not want the kind of involvement that you have just called for.

Hon. Mr. Baetz: I would say the reasons that were given to objecting to the incorporation by my ministry, as I understand them, were rather technical, but I can tell you that they we are quite prepared to take a look at some future structure that is a supporting kind of thing, whether you call it a membership, as I indicated earlier, or whatever it is. But just because, for very technical reasons, this application was felt not to be the correct one, that does not mean we are going to close the door to any other possible arrangement which is going to elicit the support of thousands of people out there who are prepared to help us to have a better gallery.

If government can get help from citizens who want to donate their time or talent or money to support the gallery, all to the good.

3:40 p.m.

Mr. Conway: I have sat here and listened to your speech, just concluded, and I am a donor; I have made a donation to this gallery and I have joined this organization. Then I find out that you, the author of this speech, are also an author of an objection to our incorporation. I would be mad as hell. I tell you I would have a very hard time squaring the promise of that speech and the performing deed, however technical it might be. I know you are a man of great concern that right impressions be left. I just regret again that while the reasons may very well have been technical, the impact and the impression, more importantly, was both negative and political. I don't think the government wants that; I certainly don't think the Legislature wants that. I think we have to work more to bring the two together.

Hon. Mr. Baetz: I am convinced, because I have great confidence in my staff and my deputy, that the reasons that they looked at were strictly technical and that if they would have felt there was something more to it they would have shared the decision with me. Anyway, as I have said, this is not a closed door. We are prepared to look at any possible modalities.

Mr. Chairman: I wonder, Mr. Renwick, since the representative of the Ministry of Industry and Tourism is here at your request, if this would be the proper time to perhaps listen to his views.

Mr. Renwick: That would be fine with me if it is with you, sir, and the other members of the committee.

Mr. Chairman: If there are no objections. I thought that this may be a part of the question that was raised by Mr. Renwick in terms of the--

Mr. Renwick: I am in your hands. Whenever it is appropriate.

Mr. Chairman: Could we ask the representative to take the witness seat and identify himself please.

Mr. Baker: I am Mike Baker, the director of small business development for the Ministry of Industry and Tourism.

Mr. Renwick: Mr. Baker, we are just having a brief discussion about what can possibly be done, in view of the shortness of time and the urgency of the matter, to implement the substance of the recommendations of the Touche Ross report in co-operation between your ministry, the Ministry of Culture and Recreation and the representatives from the area--however they are designated--particularly as the evidence in the last three or four days indicates the very significant and substantial deterioration in relationships.

Mr. Baker: Essentially, sir, when we were approached to provide assistance in some way to merchants or some of the merchants or business people in Kleinburg, I think initially the approach was made to the tourism division. Since there was no appropriate vehicle, I was asked to look to the programs available in small business. The management development program has been used in a very co-active fashion in various communities where business people are experiencing problems.

We do not look at the particular cause. Touche Ross was not contracted to look into the problems of the business community in Kleinburg specifically because of the situation with the McMichael gallery. In the report it says that there is some additional information, that information being private correspondence with respect to the individual businesses. However, while they were in Kleinburg, it was very obvious that there was a significant impact by the McMichael gallery, whether it be open or closed or whatever. The recommendations they came up with then were not specifically again directed to the Ministry of Culture and Recreation but rather to me and my ministry to determine what we can do for the business community and help them as individuals in business.

Certainly the recommendation that something happen, whether it be by way of a committee, to increase communication or whatever, whatever the recommendations are and whatever recommendations are accepted, we certainly would be more than pleased in the interests of those merchants as small business to do what we could to facilitate that success.

Mr. Renwick: Specifically, from your experience and background and responsibility do you believe that your ministry, whatever the branch is in relation to the Ministry of Culture and Recreation, and in consultation or close association with representatives from the community, in the short time that is left, do you think it is possible to formulate and develop the plan and strategies leading up to the reopening of the gallery that will both alleviate the immediate economic concern of the merchants and people in the community but also go some way to repairing the breach in the relationships? Does time permit that kind of activity?

Mr. Baker: I really can't answer that in the sense that I have never endeavoured to do that in a short time frame. I can say that I would make whatever resources I have available to facilitate that if asked. I'm just not sure of the specific relationship of time versus a strong marketing plan.

Mr. Renwick: Would you be good enough to draw this portion of the evidence of the discussion in this committee to the attention of your minister as soon as you possibly could?

Mr. Baker: It has already been sent through the tourism division to the deputy minister and, I am sure, to the minister.

Mr. Renwick: Is there anything further, Mr. Clague, that you would like to add to the short-term, immediate problem?

Mr. Clague: I would just like to clear up one apparent confusion. Although I am resident in the village of Kleinburg and that's where my home is and where my business happens to be, I appear before this committee as the executive director of what is a nationally based organization as opposed to a locally based one. Therefore, part of me says that I very much appreciate the efforts on the part of the Ministry of Industry and Tourism to work with the Ministry of Culture and Recreation to facilitate things for the business community.

But I think there's another set of relationships that does need to be addressed, and that is with the larger public that has spoken out very clearly, very eloquently and in high volume about their concern for the future of the collection. I would view that as a separate matter, one that will probably take a longer period of time to repair. This is not to say that the business situation is not going to take a while to recover.

It is incumbent on the ministry, from our standpoint, to look at those two issues: at business redevelopment in the area as quickly as possible, and at rebuilding relationships with significant donors, with interested public and particularly those who have taken the time to write the hundreds of letters that have been written over the past few months from all across this country. An effort needs to be made to capture that energy to support the collection. We would be prepared to meet with the board, the staff and the ministry at any time to discuss strategies for how that connection might be established.

Mr. Chairman: Thank you. Thank you, Mr. Baker. Are there any further questions of Mr. Clague?

Mr. Edighoffer: I have one. In his opening remarks, I believe Mr. Clague stated he had made contact with the Premier's office and the Attorney General's office regarding minutes of the McMichael collection. Could you advise me if I was correct in understanding that they had stated the minutes should be open to the public?

Mr. Clague: Yes, we made a call to the Premier's office and were advised by his executive assistant that as a public crown corporation the McMichael Canadian Collection board minutes should be available to us. We further called the office of senior counsel in the Attorney General's office as indicated in the government directory--and I'm sorry I'm not able to recall the individual's name, but I could search my records to find it--to ask the same question. We were told similarly that those minutes should be

available. As you can understand, we were confused when we were told they would not be.

Mr. Edighoffer: I also recall that at the opening of his statement he said he represented 70 organizations.

Mr. Clague: That is correct.

Mr. Edighoffer: I won't want you to list them all here, but I just wonder if you could supply the committee with a list of the organizations you represent.

Mr. Clague: Yes, I would be very happy to.

Mr. Chairman: Thank you, Mr. Edighoffer. Mr. Clague, I thank you for your testimony and your information before this committee.

Mr. Dean, do you have a question?

Mr. Dean: No. I was going to suggest it might be appropriate for us to consider the bill clause by clause at this point.

Mr. Chairman: I will certainly be guided by the wishes of this committee at this time. We have exhausted all the witnesses before us.

Mr. Kennedy: Exhausted us, too.

Mr. Chairman: Is there a motion or an agreement that we proceed?

3:50 p.m.

Mr. Renwick: I am not prepared at this time to consider the bill clause by clause. I have not had an opportunity to digest the information which has been provided to us, nor to read the transcripts of the sessions which are available. I think it would be a disservice to the importance of the bill regardless of the technicalities--if one can use the term--of the specific amendments to the bill, for this committee now to purport to rush through the balance of the hearings on the bill. I think I certainly will need the time to reflect on what has taken place.

It is very interesting that we could deal with the bill simply as a technical bill as we sometimes deal with technical amendments to the Highway Traffic Act, or we could find some way of dealing with the specific amendments which are going to be proposed and which will undoubtedly be passed. But I do not think it is possible at this point in time to do justice to the issue simply by reporting the bill as amended.

Mr. Chairman: Thank you for your comments, Mr. Renwick. We have copies of the bill with copies of the proposed two amendments. It is a short bill and it is up to the committee, as I say, and your wishes, as to how we should proceed. You have heard the comments of Mr. Renwick. Mr. Edighoffer?

Mr. Edighoffer: Mr. Chairman, I recall very clearly at the first organizational meeting that I was called to, a sort of a subcommittee, we planned at that time that we set this week aside for hearings and I think the time has pretty well expired for this week, and that two weeks hence we would discuss the bill clause by clause.

As I have understood the witnesses, a great number of suggestions have been made for additions to the amendments that were presented in the House and the amendments suggested by the minister. As we know, you have had already the opportunity, or someone has, to look at the tape or recordings of this morning. I have not had that opportunity. I would like to have that opportunity before I make decisions on the amendments. Is it two weeks hence that the meetings are scheduled for?

Mr. Chairman: The third week of February.

Mr. Edighoffer: I would suggest that is the time we do the bill clause by clause.

Mr. Chairman: In our initial meetings I guess we were guided by a possibility of a number of witnesses that may have had to appear before this committee not only this week but the following week. We have exhausted the list of witnesses. I guess there have been recommendations and because of the flexibility of the work in this committee many of the recommendations were really not related in any way to the sections of the bill, which, as Mr. Renwick had indicated to the minister, may require further legislation or further amendments and further bills in the future.

As I say, I am guided by the wishes of this committee. It is how comfortable you are at this stage, and we certainly could begin clause by clause today. I can only be guided by the wishes of this committee, and if there is a motion--

Mr. Kolyn: May I speak to that? I and possibly some of my colleagues have a problem with the week of February 14, 15 and 16. We are having a winter conference in Kingston. This was arranged before these dates were definite and if we go clause by clause then, most of the participation that we have will be with substitutes. It may be that way. I know I will not be here on February 14, 15 and 16 because I am committed to going to Kingston, and I am sure that some of my colleagues might be going.

Mr. Renwick: What day would be convenient to you, sir?

Mr. Kolyn: How about the February 17?

Mr. Chairman: I would like to point out that the dates that have been indicated to you are dates that have been agreed upon jointly in the House and these dates provide, as I say, available days beginning on Monday, February 15, then 16, 17 and 18. We have four days and if there are any conflicts I am sure they could be resolved to accomodate everybody or else you would have to be substituted. But, as I say, we cannot add any other dates and we cannot change. We are bound by the dates indicated on your agenda.

Mr. Renwick: Just on that point of order, we are in fact not bound by those dates.

Mr. Chairman: Are we not? My understanding is that we are.

Mr. Renwick: My understanding of it is that Mr. Wells moved on the last day the resolution with respect to it, "that the following standing committees be continued and authorized to sit"--and so on--"during the interval between"--so and so and so and so--"standing committee on social development to consider Bill 175, An Act to amend the McMichael Canadian Collection Act," and so on and so forth. Then as a result of that resolution, the House leaders met and tried to work out the accommodations of the dates, so they are not etched in stone in the sense that we are bound by them.

I do not anticipate or expect, with the hearings we have had and the opportunities which we have had, it is going to take us the four days. I think it is probably going to take us a day if we do our work properly. Nobody ever knows these things, but that is my sense about it, if we are all prepared. That was my only point.

Mr. Chairman: Perhaps you may have misunderstood what I said, Mr. Renwick. I did not say that we have to meet exactly on those four days. Those are the four days provided.

Mr. Renwick: I thought you said by the House, I am sorry.

Mr. Chairman: It says, "and that these standing committees be authorized to meet during the interval between sessions in accordance with the schedule of the meetings agreed to by the three party whips as tabled today." We have our schedule before us and this is specifically what I was referring to.

Mr. Renwick: We faced it in another committee and we didn't have that problem.

Mr. Kennedy: Mr. Chairman, I am not going to be available on February 15 and 16. I would think in the light of our discussions, as Mr. Renwick has suggested, it could be buttoned up in a day or so. Could we call the meeting for February 17?

Ms. Fish: I simply wanted to try and understand from either Mr. Edighoffer or Mr. Conway whether they were agreeing with a rough general assessment that a day, possibly two, would sound about right and whether their thoughts that we might conceivably meet on February 17 with a continuing provision of February 18, if needed, would be appropriate?

Mr. Conway: I will agree to that, Mr. Chairman. There is always a problem with the substitutions. My friend the member for Ottawa East (Mr. Roy) could not be here today; though he wished very much to be, he had to be elsewhere. I have noted that there have been substitutions during the course of this week. Such are the rigours of parliamentary life.

We have had the opportunity this week to hear a lot of

testimony. We had some interesting, unexpected developments at the beginning of the week. Without wishing to be provocative, I note that we still haven't heard from the minister on an important matter of his position vis-a-vis the release of those minutes. I feel very strongly that it is extremely important to go through--at least I want to--the transcripts to think about what we have heard, look at the many suggestions, interpret the statements of the minister and look at the amendments. I think the time provided will probably be sufficient and we will just all work co-operatively to get the job done during that particular time. As far as I am concerned, I am available that entire week and don't in any way wish to be difficult about the subject.

Mr. Chairman: We have had a suggestion of two dates, February 17 and 18. I think all members would prefer that those who have been present during the deliberations this week meet then, rather than be substituted. It would be the preferred decision.

Shall we begin Wednesday, February 17, and continue, if necessary, on February 18? Is that agreed? Are there any objections? This is clause by clause.

4 p.m.

Mr. Renwick: That is fine with me. Could I just throw out this suggestion? I have been trying to solve the problem between the particularity of the amendments to the bill and the substance of what we have been talking about, and it does seem to me that something along this line is the way I have been thinking. It is that there is no magic about our report. We can report the bill but we can also report some other things in the same report and I think without proposing legislative amendments to try to do it, which would be doing a disservice to the bill and to the substance of the issues that have been--

Mr. Chairman: I have been just advised that we can only report the bill which has been referred from the House to the committee.

Mr. Renwick: But you stand in the House and report. I always hate it when the rigidities of the rules avoid a sensible solution to a conflict which has arisen, and I don't want to be put in the position of straining my brains and the patience of my colleagues on the committee by putting a series of amendments to try to illustrate the points that I want to make about the bill that should have been made and that should be made if a comprehensive view is to be taken of the substance of the problem. I don't want to do that. I certainly have the wit and the ingenuity, not myself but with those who can be of assistance to me, of proposing amendments which would take up an immense amount of time to illustrate the points that I feel have to be made.

However, I do believe it is within the wit of the parliamentary system that when we report this bill we can add as an addendum to the bill, as a commentary by the committee on the bill, as annex B to the bill or a prefix to the bill, something which states that there are four or five or six matters of significance that have come before the committee that the Legislative Assembly

of Ontario should be advised about.

I will leave it to the clerk's office to solve the procedural things, sir, in connection with you. What I wanted to propose was the kind of suggestion that in a sense, without calling it an interim bill or not, this is a patchwork solution to a number of problems, and that we earnestly request the ministry and the collection to now get down to work to building a new constitution for the McMichael collection to coincide with the new buildings for the collection and the new outlook which I hope will be as a result of the committee.

I think we could, for example, suggest that serious consideration must be given to the question of opening the membership of the collection so that the trustees are not synonymous with the members, and that there is some public representation in there.

I think the fundamental basic questions which we can't answer are the ethics questions which were raised directly and effectively by Mr. Newlands when he appeared before us. I think there is room for a commentary in the report to the assembly or in the addendum to the report of a unanimous agreement that the relationships with the community and with the merchants in the community are a matter of serious and urgent importance, perhaps four or five things. Certainly even if it were only platitude, I would like to see a statement by this committee that it is the earnest desire of this committee that every conceivable thing be done to repair the breach in the relationships between Mr. Robert McMichael and Mrs. Signe McMichael and the McMichael collection and the Ministry of Culture and Recreation, whatever those words would be.

It did seem to me that the way in which we can carry out our technical mandate as well as do justice to the substance of the matters that have been raised, is that we should be able to devise the form of a report in which we, as a committee, in a non-partisan sense could agree unanimously. I think it would save a lot of time and it would certainly save time in this committee. I am not saying we agree to do it today, I just put it out for reflection between now and the time we meet.

When the bill came back into the House, I think it would eliminate any need for the bill to go into committee of the whole House. Perhaps it could go directly to third reading and the report would speak for itself and be the unanimous reflection in an nonpartisan sense of what this committee thinks of the substantive aspects.

I think it would be a dereliction on our part to treat the bill only in its technical sense without making some brief comment about a number of the salient and substantial parts which have been part of the substrata of the whole discussion.

Mr. Chairman: If I could comment on your remarks, Mr. Renwick, if procedurally there has been a precedent, we could include an addition following the vote on each section of the bill, clause by clause. If we could find some precedent--and I will be consulting the clerk--there could be a general remark, a conclusion

or certain references to concerns that we have in establishing the type of harmonious working relationship that the minister indicated, and that we all, as members of the committee, are not only optimistic but are concerned that this harmonious relationship that has been established following the February 1 agreement and the amendments to the present bill; such a concern, if acceptable procedurally, I would appreciate if you could think about, and perhaps the committee will deliberate on it.

There would be no objection on my part if this is allowed and there would be no procedural complications in adding such a comment while reporting the bill to the House.

Mr. Renwick: I am sure there is in the voluminous records of Parliament some precedent for this, but if there were not, sir, what greater honour for you than to have a place in the next edition of Erskine May as having broken new ground in the development--

Mr. Chairman: It would be the honour of every member of this committee, I am sure, to initiate something unique.

Mr. Renwick: Mr. Chairman, may I say that I personally appreciate the openness and informality with which we have dealt in this committee with this bill rather to have been stuck with a series of procedural motions and so on. I think this is a much better way to deal with it, and the credit is due very much to you, sir.

Mr. Chairman: Thank you.

Mr. Kennedy: I see the member for York North, Mr. Hodgson, who has listened intently to our deliberations over the two or three days, is present and has shown such interest all the way along.

Mr. Hodgson: Thank you, Mr. Kennedy.

Mr. Chairman: Would you please take a seat so that we can at least register your comments.

Mr. Hodgson: I am a witness.

Mr. Chairman and members of the committee, I would like to see a further amendment to that bill, one that I suggested to the ministry several months ago, that the directorship on the committee of the McMichael Canadian Collection should be enlarged. I would like to see that enlarged--I don't know, use your own judgement--to include a member of the community.

The witnesses who have appeared have suggested they would like to submit a list, not necessarily themselves, but a list of people who would be willing to serve which would be of benefit to the directorship and they would have some knowledge of what is going on in the committee.

I hope when you are considering amendments to the bill on February 17 that some member of the committee will bring forward a

suggestion that will enlarge the directorship. It should be enlarged, and I would be anxious to see somebody from the immediate community on there.

Mr. Conway: I return to the point that continues to concern me. It has been raised again by a witness this afternoon in so far as what the Premier and the Attorney General's office advised on this matter of minutes. I know everybody wants to get out of here, so do I, but we did leave at 12:28 with the minister saying he would take under advisement that very important question. I do not want to adjourn this part of the proceedings without some direction from the minister on that matter.

4:10 p.m.

Hon. Mr. Baetz: Mr. Chairman and members of the committee, I should preface what I'm going to say, having taken under advisement this question of making the minutes public, by saying I fully agree that in view of the fact that the McMichael Canadian Collection has over the years evolved from what was strictly a private, family collection to become a quasi-public collection, moved on to become a full public collection and has now become a full public collection; in view of that, and especially in light of the very, very substantial public expenditures involved, future minutes of the board should be public, except--and I think this has been pointed out several times here by some of the witnesses--those minutes of the board that deal directly with deliberations and decisions relating to acquisitions and, I suppose, to sales.

What I have in mind there is the thing dealing with how much a painting is worth. We don't want to have the whole wide world know that Mrs. Y, who thought she had a million-dollar oil in her place, finds it isn't worth quite that. But with the exception of those aspects of the minutes that deal with acquisitions, sales and other items that I might be persuaded by the experts in the field should not be made public, generally the minutes should be made public.

Having said that, I feel, frankly, that the minutes of past meetings should not now be generally made public on a comprehensive basis. That is not to say that if this committee feels it is absolutely essential to have an excerpt of the minutes even in the next few weeks in order to make an intelligent decision, those should not be available. But I do not think it would be appropriate, and perhaps not even ethical, suddenly now to make all the minutes available that were written over many years with the idea that they were restricted. I think that would really be breaking faith with the people who contributed to those discussions and those decisions and to the people who wrote those minutes.

Those in a very general way are the feelings I have about the minutes. In future, by all means, it's a public institution and public expenditure is involved; the members of the board must know that those minutes are going to be made public, except for those areas that I have referred to. But for the past I really hope you will agree that we should not break faith with those people who participated in the development of the minutes and in their writing

over the years, because, quite frankly, if you go back it was almost a family collection at one point, and I really don't think anybody at that point thought the whole world would be reading the minutes.

Mr. Conway: All right, then. Just three points on that quickly. One, I take it that you have just made a statement of policy on this matter; I take it that you will be communicating that to the board.

Hon. Mr. Baetz: That's right.

Mr. Conway: If you do I would like to see a copy of the written statement simply because there were a few refinements that I think you wanted to make.

Second, I understand you to say that if between now and February 17 it is the determination of some in this committee that they would like to have some specific notations from earlier meetings you would entertain that request.

Hon. Mr. Baetz: That would deal with the matters at hand.

Mr. Conway: Right.

Hon. Mr. Baetz: Yes.

Mr. Conway: Third, I trust that you will then undertake a discussion with the Premier's office and/or the Attorney General's office to clarify any confusion that certainly seems to exist, because the impression has been left that some of the public calling have been told as a matter of course that these have been public and are available.

Hon. Mr. Baetz: I had already determined to do the latter. I should have mentioned in my statement here that really the matter of the minutes being made public is something either to be part of the memorandum of understanding between the agency and the ministry, or it can be an exchange of letters with the agency.

Mr. Chairman: I think all members of the committee would appreciate copies of any such forthcoming statement related to the release of all minutes as being public.

Mr. Renwick: If I could speak to that briefly, we have a subcommittee of the committee; rather than have the matter totally delayed until February 17, would it not be possible for the subcommittee to be available to meet with whoever the minister designates and someone from the board, to look at the minutes of the meetings and prepare whatever relevant extracts there may be to the business of the committee, rather than leave the matter hanging in the air as to the mechanics of how we carry out what the minister has suggested.

Mr. Chairman: If it is the wish of this committee to select a subcommittee to go through some of these minutes and pick the minutes that are relevant to sections of the bill--

Mr. Renwick: I do not think there has been such a breakdown in communication between this committee and the ministry that could not be agreed upon, that perhaps Ms. Saxe or Mr. Solway or someone designated by him could look at the minutes--they heard what went on here--and prepare for us a summary of whatever they believe to be relevant to what we are talking about. There must be a short-circuit way rather than leaving the thing open.

Mr. Chairman: This indicates a request by this committee to the ministry, or to the board in this case, to provide certain documents to the committee or subcommittee, and I would like to have a formal request or a motion if that is the case.

Mr. Kennedy: I am not quite clear, Mr. Chairman, on just how this would contribute. We had an agreement reached on Monday, or whatever day that was presented to us here. We had the amendments to the bill presented at the same time and I am not just sure how going back into minutes is relevant to what we want to do on February 17. I am not quite clear. It seems to me they are two separate things.

Mr. Chairman: As I refer back to my earlier comments, if there is a formal request for the submission of documents I would have to be guided by such a formal request to demand that these documents be produced so that if there are any obstacles there would be some way for that. That is perfectly proper.

Mr. Conway: I do not want to (inaudible) simply that if we, as I review the testimony and transcript, there may not be any need on my part. I appreciate the minister's generosity and I have a lot of work to do between now and February 17. There is a lot of testimony relating to the some key points along the way and it may be--it may not be--but it may be that at some point a request for some minute to clarify a confusion would be in order. That was all I was asking for. Mr. Renwick, if they want a steering committee through which this will be processed, that's fine with me.

I am just saying it might be the case that there is something that comes out of my reading of the testimony for which a minute would be helpful, and I would just want the freedom to make that request of the minister since he has indicated that under some conditions he is prepared to entertain such a request.

Mr. Lane: Mr. Chairman, I mentioned this morning and I still feel somewhat concerned about it, if we are going to gather more information and have a look at papers and things that related to this in days gone by, then it seems to me the point I made this morning is rather important.

We heard a lot of talk about requests from the fire marshal or from the fire department of Vaughan as to what should happen, and apparently the board did not get those messages. There was some correspondence going back and forth. I personally would like to see that correspondence and the building permit.

In my experience with building permits, I could not build a chicken coop without a blueprint and yet apparently here was something built that somebody said today was worth several millions

of dollars and it wasn't built according to the blueprint or the safety code or whatever. It seems to me if we are looking for materials that are going to answer all the questions that have been brought up this week, we have a lot of material to look at. I don't know whether we want any or not, but I am just saying that one seems to be as relevant as the other.

4:20 p.m.

Mr. Laughren: I would have no objection to a subcommittee as long as Mr. Lane is on it in case there are other things he wants to look at, and Mr. Renwick as well, since I undoubtedly will be in close consultation with my new leader.

Mr. Conway: One suspects that after Sunday the member for Riverdale will have a lot of time to sit on these committees.

Mr. Laughren: We will be on the same committees.

Mr. Renwick: I must say that hasn't escaped me. I might even look forward to it. I would have more time for committee work.

Mr. Conway: We know there will be no violence in Riverdale.

Mr. Renwick: Unless it is by act of God. The one point that I did want to raise is the question I did ask for the then vice-chairman of the board to come and let us know how he got those documents into his possession. That is that anonymous document that was the subject of the discussion during the morning sitting on Wednesday, February 3. Very briefly, quoting from Hansard on page 36: "Mr. Renwick: Perhaps just to make certain that we tidy the matter up as best we can, I would like the vice-chairman of the board, if he would be available, simply to let us know how they came into his possession."

"Mr. Taylor: Yes, he is a former vice-chairman, sir. I am sorry."

"Mr. Renwick: A former vice-chairman."

"Mr. Taylor: Yes. Mr. Warren Jones, who retired in 1978, I guess it was."

"Mr. Renwick: I just want the record to show how they came into his possession."

I would appreciate it if arrangements could be made very briefly for Mr. Jones to be present at some point on February 17 or 18 so that our record will show how he came into possession of--

Mr. Kolyn: May I interject, Jim? Correct me if I am wrong but I think somewhere along the line you mentioned to Mr. Taylor that if he would undertake to ask the gentleman himself you would be agreeable to that. I am not sure but I thought you had said somewhere along the line to Mr. Taylor that if he was talking to the retired gentleman, you would get the message back.

Mr. Renwick: I may have. I just want to know how he--

Mr. Kolyn: I am not sure, but I think that is what you said.

Ms. Fish: You want the advice back.

Mr. Renwick: If Mr. Jones wants to write to the chairman of the committee saying how he did it rather than appear, then I--I would prefer to ask him how he got them. That was my understanding. I expected him to appear at some point in time to tell us how those documents came into his possession. I feel very deeply and seriously about that issue and I think it would be unwise for us not to find out how that document came into his possession.

Mr. Chairman: As we go through clause-by-clause discussion of the bill and we find that the testimony or the comments or the answers to your requests by Mr. Jones would be relevant to the bill, I am sure that either on the 17th or the 18th we may request either a written answer or an appearance by Mr. Jones. I leave it up to the committee to decide.

Mr. Renwick: That would never get answered in that short notice. I would like Mr. Jones personally to appear and tell the committee how he received the information. I am quite happy if he met with the subcommittee and told the subcommittee, but I think it would be wrong for this committee to leave the matter hanging, that the person who, to the knowledge of this committee, is the first one to have seen those documents and presumably can shed some light on the origin of them must come before the committee. I am quite prepared to write to someone about it, but I would much prefer it to be done formally by the committee, by the clerk of the committee or by you, sir. I would also appreciate it--

An hon. member: Tell Mr. Jones that we would like the information.

Mr. Chairman: I would also prefer Mr. Jones to appear before all the members of the committee rather than a select two or three people of a subcommittee.

Mr. Renwick: We could leave it on that basis that he be requested to appear.

Mr. Chairman: As I say, if the members of this committee feel that his presence, his testimony or his relevance to this bill--Mr. Renwick, I am sure, feels it is relevant to the bill, but it is up to you. If you instruct me to request his presence on either February 17 or 18 I certainly will be bound by your wishes. Are there any comments regarding the specific concern Mr. Renwick has raised?

Ms. Fish: No. My only thought is that I might have confused it. Obviously, I haven't got the stuff directly in front of me that Mr. Renwick read, but I was under the impression that the request had gone to the chairman to indicate if further advice would be useful.

I'm sorry. I'm not trying to dispute the thing. It's just that I did not come away from that exchange with quite the definite understanding that Mr. Renwick had about additional people speaking, particularly that point as distinct from information to come back, I thought, through the vehicle of the chairman, either presumably orally or conceivably by advice in writing. I suppose my only contribution would be that if that is a piece of information a committee member wants it's perfectly reasonable to have that come back.

I'm just a little bit uncertain about the mechanics of having somebody in person, and I hope Mr. Renwick would be agreeable if the form of the advice came, in fact, in writing or however it was appropriate rather than moving in this kind of situation where it's asking other people to come before the committee to--

Mr. Chairman: Would it be agreeable, Mr. Renwick, if a letter were to go from me as the chairman of this committee asking Mr. Jones to provide in writing the answer to your question?

Mr. Renwick: Yes, it would, sir.

Mr. Kolyn: On page two of February 3, 1982, I asked Mr. Taylor a question, and this is the transcript of what he said to me:

"Mr. Chairman, in response to the question I wonder, without begging the question, if I might put that aside momentarily and then call on Mr. Sears, the architect, and also Mr. Noon and Mr. Forsyth of the architectural division of the ministry to deal specifically with this question because I am not qualified to speak to it and answer it specifically?"

Could I possibly get a written response to the question?

Mr. Chairman: From the three people you have mentioned?

Mr. Kolyn: Yes. Or one of them.

Mr. Chairman: A response to a specific question?

Mr. Kolyn: Yes. In the afternoon, on pages 20 and 21, I had another question that I would like a written response to.

Mr. Chairman: That's a lot of writing we will have to do, Mr. Kolyn.

Mr. Kolyn: Mr. Renwick was talking about deacquisitions, and I had asked--

Mr. Chairman: You just opened a can of worms, Mr. Renwick.

Mr. Kolyn: --a supplementary to Mr. Newlands, and I said: "We were just talking about deacquisitions. It says here, 'At original cost.' Do you know what that really means, and could you explain the process?" Mr. Newlands: "I am in no position to defend or define what the gallery has been doing. It is a whole legal area that is outside my competence." Mr. Kolyn: "Could I get somebody else to address that question later on?" Mr. Chairman: "I am sure

you can, yes."

Mr. Chairman: So you want an additional letter to Mr. Newlands?

Mr. Kolyn: No. I want someone from the ministry, because he couldn't answer the question.

Ms. Fish: Or it might be the gallery.

Mr. Kolyn: Or the gallery. That's what I want.

Mr. Conway: I think this also leads to the work we have to do. I mean, it has already been pointed out--and I hope the member for Wentworth (Mr. Dean) is listening--that we haven't even opened the transcripts and we have already had five questions. I haven't started, but, you know, get ready, folks; you are already telling me that we may have a long day or two or three.

4:30 p.m.

Mr. Chairman: There are requests for information, which officially will be requested by the chairman of this committee.

I go back to the original suggestion of Mr. Renwick that a subcommittee composed of I don't know how many people--could you have a motion and indicate who would be a member of this subcommittee and when we should meet? Is there a need for this subcommittee?

Mr. Kennedy: I thought we would do it by correspondence.

Mr. Renwick: I was thinking of the existing subcommittee as a method, that if you had to contact the committee you could contact the subcommittee during our recess.

Mr. Chairman: If we could have an agreement that, in case anything may happen in the course of the next week or so, I contact you, Mr. Renwick and Mr. Edighoffer, in conjunction with the chairman--

Mr. Renwick: Actually, it's Mr. Laughren.

Mr. Chairman: Mr. Laughren? You have impressed this committee to such a degree.

I would like to thank all the members of this committee for the high level and professional nature of your questioning. I would like to thank Mr. Michael Bell, who is still here, and the representatives of the board, the witnesses, the ministry staff, Mr. Minister and everyone. I just hope that on February 17 and 18 we will not only carefully scrutinize the bill but perhaps even follow it up, if there is general agreement, with some further suggestions in reporting it to the House.

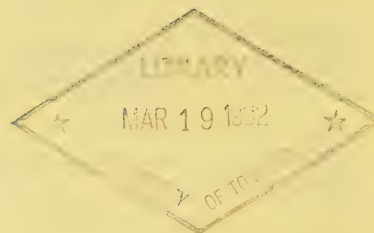
Mr. Conway: Might I just note that--and I certainly underline and emphasize and endorse all that you have said--in seven years in this building, in this job, I have never enjoyed a

more animated crowd. In fact, I have watched and listened as best I could to the second committee hearing that was always going on out in that hall. In fact, I was almost going to poll the room at one point, Mr. Chairman, because the body language and the chemistry in this place in the last three days has been the stuff of a darn good play. Thank you.

Mr. Chairman: Is this a request for applause? The committee is adjourned until 10 o'clock, February 17.

The committee adjourned at 4:33 p.m.

CA24N
XC 12
- S 78



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

WEDNESDAY, FEBRUARY 17, 1982

Morning sitting

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Shymko, Y. R. (High Park-Swansea PC)

VICE-CHAIRMAN: Gillies, P. A. (Brantford PC)

Conway, S. G. (Renfrew North L)

Dean, G. H. (Wentworth PC)

Edighoffer, H. A. (Perth L)

Fish, S. A. (St. George PC)

Jones, T. (Mississauga North PC)

Kennedy, R. D. (Mississauga South PC)

Kolyn, A. (Lakeshore PC)

Laughren, F. (Nickel Belt NDP)

Renwick, J. A. (Riverdale NDP)

Roy, A. J. (Ottawa East L)

Substitutions:

Lane, J.G. (Algoma-Manitoulin PC) for Mr. Jones

Pollock, J. (Hastings-Peterborough PC) for Mr. Gillies

Also taking part:

McCaffrey, Hon. B., Minister of Culture and Citizenship
(Armourdale PC)

Clerk: Arnott, D.

From the Ministry of Citizenship and Culture:

Cornell, W., Deputy Minister

Saxe, D., Director, Legal Services Branch

From the Ministry of the Attorney General:

Revell, D.L., Legislative Counsel

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, February 17, 1982

The committee met at 10:11 a.m. in committee room No. 151.

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT
(concluded)

Resuming consideration of Bill 175, An Act to amend the McMichael Canadian Collection Act.

Mr. Chairman: I see a quorum. I call the committee to order. Good morning. Welcome everybody. We have had some changes, I guess, since the last time we met. We have a new leader of the NDP. I do not know whether this will change the nature of the concerns that the members of the NDP have had on this committee, but I see smiles of satisfaction on the faces of both of them.

Another change has been some minor shuffles in the cabinet. We welcome our new minister charged with citizenship and culture, the Honourable Bruce McCaffrey. Welcome, Mr. Minister.

Hon. Mr. McCaffrey: Thank you.

Mr. Chairman: I know you have read all the Hansard records of the deliberations of this committee. You are well versed in the issue. If you should like to simply make a short, brief statement, because we have a long day ahead of us, you are most welcome to do so.

Mr. Laughren: Mr. Chairman, might I speak on a procedural matter before the minister gets into it. I will put it in the form of a formal motion, if you so wish. It seemed to me that due to the fact that the minister has not had the pleasure of hearing and seeing the witnesses, which the previous minister did, what we should do is have both ministers here and recall the witnesses for this committee.

I think you would be the first to admit, Mr. Chairman, that the present minister has not been privy to many of the important things that have occurred in this committee, such as the body language, for example, which played a very prominent part in the many of the presentations before the committee. I am sure that the minister would not want to miss that. I wonder if you think it would be appropriate at this time to listen to them, if those witnesses care to do so, of course.

Mr. Chairman: I could have started this meeting quite differently by simply saying that we will begin clause-by-clause discussion of the bill. But, having been flexible, as the tradition of this committee is, I thought to welcome the minister and compliment your party on the selection of your leader. You see what happens; the minute you become flexible then you open up a can of worms.

Mr. Laughren: Right on. That will teach you.

Mr. Chairman: I know that Mr. McCaffrey is a man of great talent and ability, but I do not know to what degree he has been following it. We are meeting today, as agreed when we adjourned, so that we will begin clause-by-clause discussion of the bill.

You have received all the information that had been required by certain members of the committee, and that is the purpose of our meeting. I am sure that if the new minister would like to make any comments or answer any questions you may have, as we go through clause by clause, he will do so. He is well versed in the nature of this bill. Whether or not there is any need to call the former minister to join us is something that the present minister, I am sure, will decide. I just do not see any point.

I do not know whether I thought you were joking for a minute when you suggested calling all the witnesses and starting this all over again. I think your comments certainly do not reflect the wishes of this committee when we adjourned, namely, that we go clause by clause. We will begin clause-by-clause discussion. Mr. Minister, do you want to make a short statement maybe on Mr. Laughren's concern?

Hon. Mr. McCaffrey: Mr. Chairman, members of the committee, thank you for your courtesy and your compliment. I am obviously enthusiastic and excited about the new responsibility. With regard specifically to the matter before you, the truth is that I did read not all, but most of the transcript last night, and I had the opportunity late yesterday evening to have a pretty thorough briefing from our ministry people, who have been intimately involved in this for some considerable length of time, as you members have been. I have a very real sense of the issues before the committee and it is my hope, let me be candid, that we can proceed at an appropriate time into the clause-by-clause debate of the bill because I would be anxious that we proceed and report the bill. There is no mystery about that. My understanding is that Mr. and Mrs. McMichael, members of the board and surely the members of the Legislature would like to bring this chapter to a close.

It is critical that be done the right way. To that extent, I am in the hands of the committee and in your hands. I have no formal statement at all. I am just not in a position to make it, but I do not feel uncomfortable with the time that I did have last night to read the transcripts. It does not reflect, as Mr. Laughren said, the body language. Damn it. Being a guy, I am sensitive to body language. I watched Floyd right in this very room operate with considerable skill in telling Bob Mackenzie what to do and when to do it and all that, and I feel more comfortable sitting up here because I served as chairman for so long. I do not think we have to have everybody back to get that feel of the body language again.

Thank you for your courtesy. If we could proceed to the agenda you have, I will try to help if and when I can.

Mr. Chairman: Thank you, Mr. Minister. I guess we will begin our deliberations on clause by clause.

Mr. Edighoffer: Just before we go into clause by clause, I would like to add my congratulations to the minister on his appointment. However, he said that last night or in the last day or so he had considerable discussion with members of his staff, and I am certain that they have informed him of the commitments that have been made by the previous minister in reference to the bill. I am thinking in particular in reference to the minutes being completely open. I was hoping that he would have included in his opening statement that he would continue the commitments made by the previous minister.

Hon. Mr. McCaffrey: I recall a number of commitments with regard to materials requested from Mr. Kolyn--again this just showed up in the transcript--and I think from Mr. Renwick. I believe that material has been made available. With regard to the discussion that took place on the minutes, we can all just go back and read the transcript, but my sense of that was--and there was an interesting little interchange between Mr. Conway and Mr. Taylor and Mr. Baetz, as I recall--that I did not think it was resolved that the minutes would be forthcoming.

I would be happy to have the deputy or others respond to that, but my sense of it was that if we are going to have as a policy with regard to our relationship with agencies, a different policy vis-a-vis minutes, we can do that, but I did not know that it would be appropriate for us in a retrograde way to go back on what had been an understanding. Mr. Taylor's comments, I thought, were fairly clear on that. He did not see the minutes as public documents.

Mr. Edighoffer: However, I must add that the previous minister had said that all future minutes would be open to the public. Am I correct in understanding that?

Mr. Chairman: If I recall correctly, I think you are correct about the understanding. The minister had indicated that future minutes of the board will be presented with the exception of certain parts of the minutes and meetings that the board may feel are too sensitive. There was a qualifying clause to that but there was a definite commitment by the Honourable Reuben Baetz to make these minutes public, and this is the question that is being addressed to you, Mr. Minister.

Mr. Edighoffer: The new minister is agreeable.

Mr. Chairman: Since you are agreeable, I guess that answers your question then. We are beginning now with Mr. Renwick.

10:20 a.m.

Mr. Renwick: I am not interested in delaying the process of the committee, but I want to clarify a couple of matters that must now be clarified in the light of the documents that have been put before us this morning. I think there is obviously a very important correction to the proceedings of the last committee.

I refer to the question of the anonymous person who is the source, in my opinion, of the damage which has or could have been done to Mr. and Mrs. McMichael. I am very

committee address its attention to how we will deal with the anonymous source, what our role is and what our position is. I specifically refer to the two-page letter from Mr. John P. M. Court, dated February 15, 1982, which is addressed to yourself, Mr. Chairman. I have just now had the opportunity to read it.

Obviously these scurrilous allegations first came into view of anyone--and I believe Mr. Court's letter is both accurate and that he carried out his correction of his position before this committee with great care--the document first surfaced in the possession of Mr. Sears. He also had the letter to the chairman of the committee, dated February 16, 1982, from the former vice-chairman, which I think is satisfactory to me in clarifying how the information first came into the possession of the then vice-chairman, Mr. Warren E. Jones.

I have expressed myself earlier about the seriousness of the matter. One possibility is for this committee to formally request the Solicitor General or the Attorney General, whichever is the appropriate ministry, to have an investigation made with a view to ascertaining whether or not there has been any breach of any law, rule or regulation and, if possible, if there is any such breach of any rule, law or regulation, to investigate and to identify the person who is the source of these anonymous documents.

I believe that this committee can do no less than that, and I think it is important that the letter from Mr. Court to yourself, sir, and Mr. Jones's letter to you, should be not only exhibits but should be read into the record of this morning's proceedings. I say that because they are in very real substance a correction of the existing proceedings of this committee; and if they are not repeated, then anyone who simply reads the minutes of these proceedings will be misled.

I am quite prepared to read the letters in, but perhaps you, sir, as chairman, since you were the recipient of them, should read them into the proceedings. Then I would appreciate the views of my colleagues on this matter which I raised. If it were appropriate, in order to have it properly before the committee, that I should make a motion with respect to reference of this matter to the Attorney General or the Solicitor General, I would gladly so move so that we could have the matter before us formally.

Mr. Chairman: My understanding is that there were requests prior to the adjournment of this committee to obtain an explanation from Mr. Jones. Such a letter was obtained, dated February 16. Following this a clarification of a statement in Hansard has been forwarded to me, dated February 15, from Mr. Court, who had been a witness before this committee, along with other witnesses. Copies of all of these letters have been distributed to the members of the committee.

There is no doubt we had a similar incident--I would qualify the word "similar"--but certainly a clarification of a statement in Hansard by Mr. Clague who wanted to clarify a statement he had made that there had been no misleading aspect of what he said with regard to minutes of the board. Since Mr. Clague was a witness at the time and was present at the time that we were questioning witnesses, this clarification was made and recorded.

Mr. Court has made his correction of a statement he made before the committee in the form of a correspondence. We agreed we would seek any information to be provided in written form, rather than to ask people to appear before this committee. It was my understanding it was a unanimous decision of this committee not to call people individually.

What Mr. Renwick apparently wants is to read the letter. We may read the letter or we may simply table the letter along with all the other documents. Tabling it is just as official as reading it. Tabled documents are officially tabled along with witnesses and are part of any form of testimony whether it is testimony presented orally by witnesses or testimony in the form of briefs. A brief is an official document, as is correspondence.

I have no reservation about someone reading the letter if they want to do so. Myself, I don't see any major aspect of impact on the deliberations of this committee to have the letter read.

Mr. Conway: Since you volunteered, Mr. Chairman, I agree with you entirely on the matter of the importance of correcting the record. I believe very strongly that on a critical question of interest to this committee, we now have information that very materially affects the record. I, for one, would very much appreciate it if you would carry out your offer and read both items into the record officially.

Mr. Chairman: The request was to read just Mr. Court's because that is the only other aspect of witnesses which constitutes a correction or clarification of Hansard. Since we have had this recorded in the case of Mr. Clague, I certainly see some logical parallel in having Mr. Court's statement recorded. If they are recorded in committee deliberations, they are reported in two ways. They could be briefs that are tabled, which are officially records of testimony, or they could be oral testimony before this committee which is picked up by Hansard.

Philosophically, or as a matter of principle, there is no difference between one or the other in terms of an officially tabled correspondence or document. I don't see any firm adamancy in terms of pursuing this, Mr. Renwick.

Mr. Renwick: Mr. Chairman, I reiterate I don't want us to get ourselves into a position where there is delay in the process of the committee. Would you, sir, or could I or Mr. Conway read the correction by Mr. Court of his evidence before this committee? I appreciate Mr. Court having taken the trouble to make certain that the confusion in the transcript was corrected and clarified. I would otherwise have had to raise it myself this morning.

10:30 a.m.

I believe Mr. Court took the proper course and I appreciate very much Mr. Jones' letter. I am quite happy to have Mr. Jones' letter as an exhibit, but a specific correction of the minutes of the proceedings from Mr. Court's point of view, the point of view of the public generally and the point of view of this committee should be part of the actual proceedings of the committee. I request you, sir, myself or Mr. Conway to read Mr. Court's February 15 into the record.

Ms. Fish: Mr. Chairman, I share Mr. Renwick's view with respect to the correction letter signed by Mr. Court that it is appropriate to read it into the record and I join him in requesting you, as chairman, to read it into the record and maintain Mr. Jones' letter and the several other pieces of correspondence before us as exhibits.

Mr. Kolyn: I wanted to make the point Susan just made. If we were going to read Mr. Jones' letter into the record, we might have read the concerns of mine and Mr. Lane's into the record too, but it's just fine the way it is with the letter being read and the impression being made.

Mr. Chairman: I believe Mr. Jones' letter, unless Mr. Renwick feels that it should be read as well--

Ms. Fish: We are just correcting the record.

Mr. Chairman: Letter dated February 15, 1982 addressed to the chairman of the standing committee on social development:

"Dear Mr. Shymko:

"The matter of the anonymous allegations was one of the subjects raised in the course of the standing committee's deliberations, on which I had an opportunity to offer some information. In reviewing the transcript, and following subsequent discussions which I have had with Mr. Henry Sears and Mr. Warren Jones, I realize that there is one point concerning the process of the allegations on which my recollection during testimony was not accurate.

"In reply to Mr. Renwick's question as to when I first saw the allegations documentation, I stated my recollection 'that I had first seen it in a meeting with the then vice-chairman of the board' (Wednesday morning, February 3, page 32).

"Having had the opportunity to gather my thoughts on those events of some 22 months ago and to review them with Mr. Sears and Mr. Jones, I would now like to correct that statement by pointing out that I first saw the documents during a meeting with Mr. Sears in his office, prior to my meeting with the then vice-chairman, Mr. Jones.

"The purpose of my meeting with Mr. Sears was to review together a range of material which staff members of the gallery, who had previously been interviewed by the Klein and Sears consultants, were now forwarding for the consultants' consideration as follow-up to the interviews. Most of this material was of a routine nature, and it had all previously been placed at an arranged assembly point in my office for transmittal by me to the consultants. I did not attempt to screen the material during the assembly of it, since the staff interviews with the consultants had been conducted in confidence.

"In the course of going through those various documents, Mr. Sears and I together opened a sealed, brown envelope which

contained the allegations material. There was no indication of the source, and that was the first time that I had seen those documents. Mr. Sears clearly indicated that that was also the case in respect of himself.

"We reviewed the material carefully at that time, and Mr. Sears asked that I leave the matter to him. Some days later I was phoned by the vice-chairman, Mr. Warren Jones, and asked to pick up the documents from Mr. Sears and relay them to Mr. Jones. Mr. Jones then asked me to go through the material with him in his office. That was the first time he had seen it, and my second time.

"I trust that this clarifies the matter. I would once again assure you that I do not know who prepared the documents in question.

"Yours sincerely,

"John P.M. Court, Senior Adviser, Arts, Heritage, and Libraries Division."

This is on the letterhead of the Ministry of Culture and Recreation.

Mr. Renwick: Mr. Chairman, I appreciate Mr. Court's action in providing the committee with this correction. I would now move that the matter of the identity of the person who made the anonymous allegations should be turned over to the Attorney General and/or Solicitor General for investigation to determine whether there has been a breach of any law, rule or regulation and, if so, to investigate for the purpose of determining the identity of the person who made these anonymous allegations.

Mr. Chairman: With all due respect to your concern, Mr. Renwick, I believe your motion is unfortunately out of order. The function--and I refer to the instructions we were given by the House--of a committee on a bill is to go through the text of the bill clause by clause and, if necessary, word by word, with a view to making such amendments in it as may seem likely to render it more generally acceptable: Erskine May's Parliamentary Practice.

According to Beauchesne's Parliamentary Rules and Forms, there is no authority that a committee of the House, when considering a bill, should report anything to the House except the bill itself. I believe, in my judgement and understanding of the purpose of this committee's deliberations, we are to go clause by clause. We are processing a bill, and I don't believe your motion is in order, Mr. Renwick.

Mr. McCaffrey: Mr. Chairman, with your indulgence, may I just make a comment on that. I very much respect the point you have just made. Doug Arnott, who is the clerk of the committee--he and I had the opportunity to work together on a number of committees--knows that I am the only committee chairman who has never read the rules of order, and I take some pride in that. I wonder if we could do this. The whole matter of the allegations, as I see it, is probably one of the most distasteful things to anybody who even just reads the transcripts and the gossip, chatter and forth that has been referred to. Virtually

I recognize what your mandate is as a committee, and I am trying to help, not to complicate things. It would be difficult for us at this stage of the game to walk away from this matter. I do not see the motion as being a report back to the House. It may be, and I defer to you on that. I see the motion as one way of pursuing this matter, which is of concern to a lot of us. For my part, I would be supportive of doing those things--if these are not the words, we can work that out--but we should pursue this through the office of the Attorney General or the Solicitor General to determine the breach of law, if any, and to pursue the source of it.

Mr. Renwick: Mr. Chairman, I do not want to pre-empt the discussion. Perhaps my other colleagues on the committee want to comment on it. I moved a motion in order that the matter would be before us. Before the chairman formally rules it out of order, I am quite happy to accept any solution or any procedural method by which the matter of the transcripts of this hearing, the matter of the anonymous allegations, would be specifically referred to the Attorney General and/or the Solicitor General.

I hope I am not jumping to conclusions as to what the minister has just said, as I take it he views the matter as one that can't be left the way it is, that is has to be dealt with. I would be quite happy if he were to say he would review the matter personally and make whatever reference he deems appropriate to the Attorney General and/or the Solicitor General about the anonymous allegations, taking into account the evidence before us and the expressed views of concern I have about it. I would be quite happy with any such assurance from the minister along those lines.

10:40 a.m.

Mr. McCaffrey: I would do that if it means that we save the procedural matter of a motion.

Mr. Chairman: If I could comment on the side, my ruling, Mr. Renwick, was simply to not engage this committee in the capacity of reporting to the House anything additional to the clause. You had requested that I ask the clerk to do some research on this matter and I am indirectly indicating to you that unfortunately it would be very difficult for us to add anything other than the bill.

On the other hand, if that could be a solution, Mr. Minister, perhaps you could undertake to take this matter expressed in Mr. Renwick's motion to the Attorney General and/or the Solicitor General so that he may review these allegations and the procedure to deal with them. That would probably be a solution to the dilemma I am faced with in terms of parliamentary procedure.

Mr. Conway: I want to indicate briefly, Mr. Chairman, that as always I find the minister's intervention helpful, positive and refreshing. There is no desire on my part to sidetrack this committee on a mandate that it doesn't have. But I don't think any one of us who sat here for this last set of hearings can easily set aside the concern that is developed over the document that Mr. Renwick introduced.

I have some very grave suspicions about all of this--things that really concern me about the process. This document speaks for itself. It is bloody obvious to me where it must have come from. It is a very limited range and we have now, in Mr. Court's letter this morning, an indication that seems to narrow it even further.

On the face of it, I can't easily accept the argument that given that very narrow band of possibility nobody in this room or far from this place has ever seen these documents. One look at these documents tells you that somebody has taken a lot of time, somebody has had a lot of good access. I really find it very difficult to believe what I have been asked to believe. Therefore, Mr. Renwick's initial concern and equally the minister's, I think, very sensible response is for me acceptable. But I do want to make it very clear that this entire matter of the allegations, particularly the Blunden Harbour one--since it is the most tangible one we have--has to be resolved in some fashion.

Mr. Chairman: My understanding is, Mr. Minister, that you have agreed to pursue this with the Attorney General and/or the Solicitor General. Could that be in your motion?

Mr. Renwick: I don't think we need a motion. I am quite happy to accept the minister's assurance of that. I am quite happy to let the minister have the additional documents which are available to him as well. The one I had particularly raised here was the Blunden Harbour totem pole matter, but there are three or four other similar ones which are obviously part of the anonymous package.

I want to express my appreciation to the minister for his intervention. It satisfies my concern. We are not a proper body to carry out any such kind of investigation. As long as it is in the proper hands, I am satisfied.

Mr. Kennedy: My point has just been clarified. Thank you.

Mr. Chairman: We are now proceeding with the bill.

Mr. Renwick: I have no desire to delay the procedures of the committee, but I have my concerns about the broader question which you had raised regarding the precedents of the parliamentary system requiring us to have this very restricted and very limited mandate. Again, I am only fending for the method by which we can reach a unanimous agreement in this committee about certain. If we can't, of course, then the process will simply take its own course in the House and the views and concerns of our individual members of the committee can be aired at that time.

Again, in the interests of the possibility of reaching a consensus within the committee on some very important serious matters, I had suggested the avenue of an addendum to the report of the committee on the strict interpretation. I am quite happy to accept the decision of the clerk, as always, that is not a possible route for us to follow. I express my regrets, however, when those rigid construction of the rules prevents the committee from carrying out its mandate in a sensible, logical and commonsensical way.

Canadian Collection Act that the original agreement could ever come to that conclusion simply because the McMichael Canadian Collection Corporation is the agent of Her Majesty to carry out that agreement.

10:30 a.m.

I think it would be with great temerity that any statute of this assembly could be said to abrogate an agreement entered into on behalf of Her Majesty by the prime minister of the province with two citizens of the province unless you could point clearly and precisely to the language of the statute which did abrogate. But I cannot conceive that is a proposition of law that would be accepted by persons who are not saddled with legal training and are not obstructed in their view of common sense to the extent that we lawyers are.

I think it is essential that it be clearly understood that we in our party, and my colleague and I, are not asking the bill be called an interim bill or anything. I want it understood that we are passing the bill on the understanding that the minister and the McMichael collection and their advisers and the McMichaels and their adviser will look at the substance of the constitutional framework of what is required to make certain that the confusion which has led to all of this concern is eliminated once and for all. I am quite certain it can be.

There is a second matter on which this committee must, at least at some point, unanimously and with a consensus view express its view. It would be our very best hope that in the relationship between Mr. and Mrs. McMichael and other members of the board of trustees and the chairman of the McMichael Canadian Collection, and in the relationship with the Ministry of Culture and Recreation, everything possible would be done to repair the damage which has been done to that relationship. It would be wise for this committee to express on a consensus basis that position.

The third item, which I think is a matter of looking to the future, for which we are indebted to the witnesses who were before us, is that it has raised the whole question of ethics with respect to the acquisition and disposition of portions of the collection over time, the policies with respect to that and the questions of the trusteeship for the public of the duties, together with the position of the employees, who may be in a position to make recommendations or decisions, and the disclosure of interest requirements.

All of that whole field is a matter which I think the committee on a consensus basis should express a view, because I think the McMichael Canadian Collection, as a result of this somewhat sad experience, can become, as Mr. Bell, the new director, said in the course of his evidence, sort of a model collection of how the public trust can be best administered. That would be a third area where I would like to see this committee on a consensus basis express its view. I think we should also express our appreciation to the witnesses collectively for the submissions which have been made to us.

Particularly because the minister is here in his new capacity, I do want to express these concerns about it. Let me say to my colleagues on the committee, that when we come to the clause-by-clause consideration of the bill, we do not have any series of amendments or changes that we want to make. There was one suggestion that did come up that we might change the definition of the collection to make certain that the collection itself, rather than the corporation, was called the McMichael Canadian Collection.

Apart from that, which was a point that other members were concerned about, we do not expect an extended debate on the individual clause-by-clause part of the bill. We will want to be sure we understand it. The bill that will finally appear for passage by the House is a very sloppy piece of legislation. It will appear very strange because it refers to an agreement that had referred to another agreement. It is a very sloppy piece of legislation.

During the course of the proceedings there were about four or five matters which would seem to me of fundamental importance that have to be looked at. We, as a committee, are not able to do it. The time that has been available does not permit it for the ministry.

I think the evidence clearly shows that the best legal and other interpretations have to be given to reach agreement by the crown, the minister in his capacity as minister of the crown, the McMichael Canadian Collection as the agent of Her Majesty with respect to these matters as set out in the original bill incorporating it with respect to the original agreement of 1965, any subsequent agreements that are there, and to make certain that the obligation of the McMichael collection in its capacity as agent for the crown is clearly understood by the board of trustees of the collection. Because the crown's obligation is indelibly there. I, for one, am not prepared to tamper with that original obligation as expressed in the solemn agreement signed by the then prime minister with Mr. and Mrs. McMichael.

It is obvious that there are different interpretations around, and that will require the best legal and other advice of the ministry and of counsel for the collection in consultation, I would trust, with counsel for Mr. and Mrs. McMichael, if they so desire to agree once and for all what the fundamental relationship is that is embodied in the obligation of the crown. I am not talking about the mechanics of how the obligation is carried out.

I understand Mr. and Mrs. McMichael are satisfied with the amendments which are before the committee. I understand they believe that would reflect the barebones of the relationship and the structure of it, but the substance of it, the spirit of it and the intent of it requires examination.

I say that to the minister very clearly both because I happen in another recreation to have been a lawyer. I happen to know that I have heard differing views here. I have heard counsel for the collection say that the agreement of 1965 has disappeared. I do not believe for one single moment that in an analysis of the McMichael

I do not want to go on any further. I have gone on much too long now, but it is really my sense that, because the rules say we can only report the bill to the House that way, we have to stick-handle and find some other way of doing it. I would like the committee to have a short prepared statement at some point in the proceedings of the House, on third reading of the bill, if the committee was in agreement, embodying some of those thoughts which would represent the consensus of the committee.

The chairman could stand in his place in the House on third reading of the bill and make that statement, saying it expressed the view of the committee on these matters. Again, I would be happy and satisfied with that. But for us simply to go back into the assembly after what we have heard and not express some of those concerns would make it very difficult for my colleague and myself to do other than at least make the gesture of opposing the bill on third reading. We are not at all anxious to do that.

Then when we get to the clause-by clause-part, I have no concern about it because if that statement were made, if the minister felt the committee had made an important contribution, then I would assume a year or two from now if any changes in the bill or any clarifications of the bill or anything were necessary, so that it made sense rather than to have this terribly untidy piece of legislation kicking around and problems go unresolved, this minister might introduce an act to revise the McMichael Canadian Collection Act so that it is a model framework for the collection and we can put all this disturbance and upset behind us. The collection can go on with its new buildings and so on and have a revitalization and a new lease on life and get rid of the garbage that has collected over the course of time around this matter.

It is within that framework that I say let us accept the ruling and let us see whether or not a short statement could be made that we could all agree on and that the chairman, on behalf of the committee, could read into the record or state on the record when the bill comes for third reading.

Mr. Chairman: Once again, Mr. Renwick, as chairman I can only report the bill after it passes this committee on third reading. As to whoever may want to read a statement, I understand that you are positively disposed to not having the bill go through a committee of the whole House and perhaps proceed with third reading.

My understanding is that there is that sense of general co-operation; at least I sense that from your remarks. The possibility may be that as members of the Legislature we can all express our comments on third reading in the House. There could be three individuals from this committee reflecting the views of the three parties in a unanimous way who may make a statement that harmonizes in its content and in its hope, as you express, of repairing the unfortunate break in the relationship that had existed in the past.

That could be done. As to whether I should be reading such a statement, I personally feel it would be preferable that members of

the Legislature and perhaps members of this committee on third reading could jointly somehow make three statements that would harmonize. But in reporting the bill, as you understand very well, Mr. Renwick, I cannot make any additional remarks or any addendum to the bill. I have not explored the possibility of myself being involved in third reading and making some kind of statement that would reflect the views of everybody on this committee.

I can certainly think about this. It could only be in the capacity of myself as a member of the Legislature, indirectly perhaps as the chairman of this committee. I cannot make any other comments. As I say, there may be other views expressed prior to going to clause by clause by some members of the committee. I would ask Ms. Fish to make a statement.

Ms. Fish: Thank you, Mr. Chairman. I do not wish to presume on the ministry's views in this regard, but perhaps I might suggest as one member of the committee a possible way to deal with the matter.

I would welcome understanding from the minister his views with respect to Mr. Renwick's first point about the question of clarification, as one reads through the several agreements and the acts, to sift out the nature of the responsibilities and so on, as I think Mr. Renwick fairly eloquently expressed. I won't pretend to repeat that for the committee, although it would seem to make some sense to pay some attention to that, to undertake an examination and to be reasonably certain that all the elements are considered, and that there is considerable clarity, as well as consistency, as between the government, the ministry and the board of trustees, which includes the McMichaels as well as others in terms of the responsibilities to be carried out with respect to the collection.

11 a.m.

I would find it difficult to suggest that one ought not to have that kind of clarity or consistency of opinion. That seems to be a very sensible route to go. If the minister shares that view, I would welcome hearing from the minister, who might satisfy himself in that regard. I would certainly join Mr. Renwick in expressing my wish--I quickly jotted down the points--that every effort is made to, as you termed it, "heal the rift" that appears to have developed and to move ahead in the operation of the gallery in the most positive, co-operative fashion possible to the benefit of everyone who is directly or indirectly involved.

Equally I would join in an expression of encouragement and wish to the board of trustees that they move as rapidly as possible--as I recall the testimony of Mr. Bell, it is his intention to seek to do that--to establish very clear guidelines respecting the several questions of--and, again, I was taking notes of Mr. Renwick's remarks--conflict of interest, the need for clear policies with respect to acquisition, deaccession and so forth.

In Mr. Bell's words, repeated by Mr. Renwick, the policies, the guidelines and the operation of the McMichael Canadian Collection can become a model throughout North America if not the world. Of course, I would as well, finally, join Mr. Renwick in expression of sincere thanks to all the witnesses.

us and to the others who chose not to come in person to address the committee but gave us the benefit of their thoughts and wisdom through written submission and advice.

I would hope that view is shared by other members of the committee, that we do have some consensus on those points and that a vehicle can be found to express that consensus. I suspect--again I don't wish to presume upon the minister--these are views the minister is likely to share. I hope that if there is consensus of the committee and of the minister there would be an opportunity to share it with the House, in the hope that a vehicle might be through the minister, sir, if you are in agreement and might be prepared to so indicate on your own behalf as well as on behalf of the committee, having had the benefit of our expression to you, to the board, the staff and members of the public in this regard.

Hon. Mr. McCaffrey: I listened carefully to the points Mr. Renwick made. In reading the transcripts, it was very clear to me that in one of those three points anyway Mr. Conway had touched on something that must be of concern to everybody in the committee and beyond, and that is the uncertainty--if that word will do for the moment--that a lot of people in the art community, the donors, et cetera, must feel as the ripple effect of this sad chapter has been expanded upon

I spoke briefly yesterday evening to Mr. Bell, and at that time looked at, but briefly only, a draft of a memorandum of understanding, one of a number that is in the process of being prepared in the ministry. I am not sure if that is the vehicle or if there are other vehicles to come. But I tell you, if this helps, at the time of third reading I would be prepared--anxious, actually--to give as thorough a statement as I could on the whole matter, that we might be able to elaborate on this memorandum of understanding, as to the extent that it is finalized.

In a nutshell, my preoccupation would be simply to make certain that out of this whole saga something very positive emerges--hopefully, more than one thing. To borrow your words, that this be a model agreement would be a clear objective, not only obviously for me but for all of us. I know the vehicle. I cannot be any more specific than that, but I think there would be ways. If that is agreeable, at the time of third reading I would do my best to elaborate on that and those points that you raise.

Mr. Chairman: Thank you, Mr. Minister.

Mr. Edighoffer: Mr. Chairman, I am still a bit concerned. I appreciate we are going into clause by clause, and you might assist me and give me a little guidance. This whole thing started because there seemed to be a lot of confusion between an act and an agreement. When we come out of this session we will have a bill amended, and then we will have a further agreement between the board and the McMichaels. I was just wondering, Mr. Chairman, or Mr. Minister, if you could give me any guidance, if there is any way that we could during our deliberations here today somehow have that agreement of February 1, which was signed as an appendix to the bill. Is there any possible way of doing that?

Mr. Chairman: Mr. Edighoffer, we accepted the amendments that have been proposed by the minister to specific sections of the bill. The minister may want to make further amendments. But you are not talking about amendments but somehow integrating the February 1 agreement with the bill.

Mr. Edighoffer: That is right.

Mr. Chairman: Procedurally, I do not see it. The only thing I do see is amendments to the amendments. But by integrating that particular agreement, we are going into the whole area of the relationship between the statutory act of 1972 and other agreements.

Mr. Edighoffer: However, Mr. Chairman, I must remind you that it has been suggested in here that an amendment be included which really includes another agreement of October 7, 1980. So what is wrong with including another agreement?

Mr. Chairman: I believe the reference to the October one is made in the February 1 agreement, Mr. Edighoffer. That is the only reference to that. So the October 1980 agreement is integrated and is to be followed between the two parties as part and parcel of the February 1 agreement. I do not see any contradiction between the October agreement and the February agreement from that point of view.

Once again I reiterate that the first exercise in repairing any damage that may have been done is the fact there is that agreement of February 1. The fact that we are proceeding with two other amendments which were made by the former minister, and that this bill itself is on the road, goes towards establishing that harmonious relationship between the parties involved.

In terms of an appendix to the bill, I again reiterate we are going through a bill, we are processing the bill. Whether an appendix to this could be added as part of the bill, I am not sure that would be proper.

11:10 a.m.

Mr. Edighoffer: As you may recall during our previous discussions, in that agreement it was stated that the collection now known as the McMichael Canadian Collection "shall continue forever to be known by that name." We had quite a discussion, and we were informed by legal counsel that we really could not include the word "forever" in the legislation. But I think, if this agreement could be added as an appendix to the bill, that would be a sign for future legislators of what the intent of the agreement was.

Mr. Chairman: My understanding is that presently that particular statement constitutes an additional amendment to the act, which would have to be presented by the minister at some time in the future. Whether or not the minister is ready to include that as an additional amendment, I would have to leave to him. But, as you have pointed out, you are talking about future legislation and a future bill that may integrate that particular aspect of the

and the "forever" clause in the statute of 1972. At this stage I do not see how we can integrate this unless the minister is willing or someone is willing to, obviously, add another amendment to the present bill before us.

Mr. Edighoffer: Well, pass that over to the minister then and ask him.

Hon. Mr. McCaffrey: I know the exact question. I asked it yesterday actually of the legal counsel. I am under the impression, and I guess we could pursue this, that you just simply cannot affix it to the bill. I understand why it would be appropriate to do so, at least in the interests of clarity.

If there is another route, and this is going to have to end in the form of a question, the compendium of the bill might include this. All I would be inclined to do is to try to see if we could find a way to accomplish what I think you want to accomplish, but I am under the impression that we cannot attach it to the bill.

Mr. Kennedy: Mr. Chairman, could I ask where copies of this agreement of October 7, 1980, physically repose following the completion of the statute? That is, someone reading the bill would ask for the bill, "Let's have a look at this bill," and he would come upon this and say, "Where do I get an agreement?" Could somebody clarify that please?

Mr. Chairman: Yes. Is it up to the legal counsel?

Ms. Saxe: There will, of course, be copies of that agreement in the minutes of the board of the McMichael Canadian Collection, in the possession of Mr. McMichael and of the ministry. They are also part of the compendium which was filed with the board, which will be in the legislative library and, therefore, be a public document.

Mr. Kennedy: So someone who goes through the process of asking for a copy of the bill, as they pay a few cents to a legislature somewhere to get copies of the bill, could ensure that would be included because it is a very pertinent part of the bill?

Ms. Saxe: No. The government bookstore does not distribute copies of compendia. All they distribute are copies of the bills. If somebody wished to have any of the background material, what they may do is to call or go to the legislative library or through the interlibrary loan method, and they can get a copy of it in that way.

Mr. Kennedy: Without difficulty? Okay.

Mr. Chairman: Any further questions or comments?

If in the process of clause-by-clause discussion the minister should feel that there should be another amendment that he wants to introduce, we shall leave it to the deliberations of clause by clause.

Hon. Mr. McCaffrey: Hugh and I will just go round and staple the damn thing now.

Mr. Chairman: We may rule you out of order, Mr. Minister. I am now asking the committee, as agreed at the last meeting prior to adjournment, to commence clause-by-clause consideration of the bill.

On section 1:

Mr. Chairman: Is there any discussion or are there any motions on section 1?

Mr. Edighoffer: Mr. Chairman, I have really two amendments here, but I guess I can combine them. I do not want to take a lot of time on it.

Mr. Chairman: Mr. Edighoffer moves that section 1 of the bill be amended by deleting the word "indigenous" and substituting therefor the word "aboriginal."

Mr. Edighoffer: Without long discussions on that, first of all, that descriptive word is used in the constitution we are expecting back very shortly. When you look at the meaning of both those words, I will grant you there is very little difference. However, as I see it, "aboriginal" really means being the first of its kind present in a region and often primitive in comparison to our more advanced types.

Then you look at the word "indigenous" and that word means having originated in and being produced, growing or living naturally in a particular region or environment. I think the word aboriginal would be a little more beneficial to this collection.

Mr. Kennedy: Is there any restrictive nature with this change? If aboriginals are originals and indigenous gives a broader context to the artistic work that might be displayed--

Mr. Edighoffer: Much broader, I think.

Mr. Kennedy:-- would that impose any limitation?

Mr. Edighoffer: Well, yes. I feel that aboriginal would really keep it to include Indian and Inuit mainly.

Mr. Kennedy: Wouldn't indigenous?

Mr. Edighoffer: That is indigenous but I think you can take indigenous further.

Ms. Fish: Mr. Chairman, Mr. Edighoffer did indicate that he had two amendments on that first section. I would just ask whether the second amendment would impact upon this discussion. If it does, could we have the wording in front of us at the same time. You might give it to us orally so we could see the pieces. If it is altogether separate then--

Mr. Edighoffer: The first part of the amendment deals, as you know, with the changing of those two words. The second amendment deals with the next two lines in the bill, plus the amendment proposed by the agreement.

Ms. Fish: Just to assist us in our procedure, I wonder if it would be possible to hear what Mr. Edighoffer is proposing with respect to changes in the last two lines of section 1, since that may bear upon the discussion about indigenous and aboriginal.

Mr. Edighoffer: All right. The second part of the amendment deals with the last two lines as we see them in the bill and the amendment proposed in the agreement. I would suggest amending that by deleting the phrase beginning, "...and other artists ..." and ending with "...Canadian art," which is in the present bill, and using the words, "...and other artists whose works have manifested a distinctive Canadian identity and whose works will be consistent with the general character of the collection."

Mr. Chairman: Perhaps we could read the present amendment to section 1 so that we can integrate the amendment presented by the minister. For the words "consistent with," originally we had the word "inconsistent." According to the amendment to section 1 presented by the minister, "...and whose art work and objects will not be inconsistent with..." you would prefer a more positive statement reading "consistent with."

Mr. Edighoffer: That's right. When I read the amendment, with respect to my colleague Mr. Renwick and the great legal advice he can usually give, I just felt this amendment acted in the same manner as you sometimes see in a lawyer's office. Instead of saying, "You are welcome," they say, "You are not unwelcome." I just thought it might clarify it a little more.

Mr. Chairman: There are two parts then to your amendment, Mr. Edighoffer. The first one deletes the word "indigenous" and substitutes for either semantic or constitutional reasons the word "aboriginal." The second one is to delete the words "have made contributions to the development of Canadian art" and simply to say "whose works have manifested distinctive Canadian identity."

11:20 a.m.

Mr. Edighoffer: As proposed in the bill and the agreement it reads: "and other artists who have made contributions to the development of Canadian art and whose art works and objects will not be inconsistent with the general character of the collection."

My suggestion is to delete that proposal and instead replace it with, "and other artists whose works have manifested a distinctive Canadian identity and whose works will be consistent with the general character of the collection."

Mr. Chairman: Is there any reason why you would find difficulty in accepting the wording of the ministry amendment, "whose works have made contributions to the development of Canadian art."? While you would feel that his works have manifested a distinctive Canadian identity, whether it is manifesting a distinctive Canadian identity makes it more universal or has specific reasons that would be more positive to the nature of the collection rather than the words "contributing to the development of Canadian art." Is there any serious objection to the word "contributing to the development of Canadian art."

Mr. Edighoffer: My feeling was that it was just a little more specific, concise and clear. That is all.

Mr. Chairman: In other words, it is a question of clarity?

Mr. Edighoffer: Yes, that is right.

Mr. Dean: May we have the opinion of the legal counsel on this matter of aboriginal versus indigenous?

Mr. Chairman: You may want to consider the word, "native," which is just as commonly used. In other words, the words, aboriginal peoples, indigenous or native peoples, which would be more universal and more limiting in terms of the semantics of the word itself. If the legal counsel has any comment on the impact of that change and what it may imply, we certainly would like to hear a comment.

Hon. Mr. McCaffrey: We are at a slight disadvantage having just received a copy of Mr. Edighoffer's second amendment. We will comment on that in a moment.

With regard to the first amendment to use the word "aboriginal" rather than, "indigenous," certainly our initial reactions were yes, and that may still be the case. There is a point that I think is worth sharing with the full committee. As I understand it, "aboriginal" might very well exclude Métis. I do not say that lightly.

I am very sensitive to the use of the word aboriginal. All through the months, those who were involved in the constitutional exercise had become accustomed to using that word and properly so. Interestingly enough, it may pose that problem, and I leave that as a question for all of us to talk about. Who might the word "aboriginal" exclude? I understand that would mean the Métis and I don't think we would wish to do that.

Mr. Kennedy: Could be hear from legal counsel, Mr. Minister, as requested by Mr. Dean?

Ms. Saxe: The only other point that I really have to add is when I was first drafting these amendments, I consulted some of the native artist community and they were most insulted at the word "aboriginal." They really got angry and strongly urged that we use the word "indigenous" and not "aboriginal." They didn't quite threaten to stone me, but almost.

Mr. Edighoffer: I might say that we got the other reaction, the opposite reaction.

Ms. Saxe: But certainly the concern the minister has expressed about the exclusion of Métis is very well founded.

Mr. Kennedy: It is not a common term in Canadian society at all. I know it is quite accepted in Australia as a very significant part of their population are aboriginal people. That is a day-to-day term, but certainly it is not here and I suspect what you have said, counsel, is what the view would be in this country.

Mr. Chairman: The implication, Mr. Edighoffer, would be the nature of the art, whether or not the word "indigenous" would limit--as it had been expressed--the wide scope of works of art from the native peoples of Canada, whether these works would be limited by using the term "aboriginal" rather than "indigenous." The words "aboriginal rights" have more of a legal implication in the constitution, referring to specific rights rather than being used as a descriptive adjective for the native peoples of Canada.

The question is whether we want to follow a legalistic description of the words "of our native peoples," or a more universal descriptive adjective that would allow a wider area of native art to be exhibited in the gallery. So the aspect we try to have is the limitation or the expansion of the works of arts to be included in the gallery. I don't know which of these really limits and which expands. On the question of sensitivity, I guess, there are two views here as to the reaction of native peoples.

Mr. Edighoffer: I just checked again. I read this a little more closely. Aboriginal in the constitution defines, "Aboriginal peoples of Canada includes the Indian, Inuit and Metis people of Canada." They have had to do that by (inaudible) definition.

Mr. Chairman: Is there any further discussion on this motion to amend the amendment to the amendment?

Mr. Renwick: Mr. Chairman, I was satisfied with the word "indigenous" as it appeared in Bill 175. Now that the question has been raised by Mr. Edighoffer, I don't actually know what the meaning of either of word is in relation to the Oxford English Dictionary, but I certainly feel that whichever of the two words is less restrictive is the one I would like to have in there. Without having the specific definitions before me from the Longer Oxford Dictionary, I would say that "indigenous" is a less restrictive term than "aboriginal." But I bow, not to legal counsel as legal counsel, but to legal counsel consulting the dictionary and letting us know what "indigenous" means since the question has been raised.

Mr. Chairman: Are there any further comments?

Mr. Kennedy: I am quite comfortable with the phrase as written, Mr. Chairman. Perhaps we are ready to put--

Mr. Renwick: My information is that the words mean roughly the same thing.

Mr. Kennedy: Yes.

Mr. Renwick: Now if somebody asks me what indigenous means, it is one of those words I don't--

Mr. Kennedy: So you can't get into any difficulty in defining it for anybody, Mr. Renwick.

Mr. Renwick: Now that the question has been raised, could we perhaps have the definitions of indigenous and aboriginal?

Mr. Revell: We have the Concise Oxford

Mr. Renwick: Can you find aboriginal in there?

Mr. Chairman: Mr. Edighoffer, you quoted something from a dictionary, did you not, in your initial comments?

Mr. Edighoffer: Yes, but--

Mr. Chairman: Would you read that again? Your quotation was from the dictionary, I guess, not the charter of rights.

Mr. Edighoffer: I stated something to the effect that aboriginal meant "being the first of its kind present in a region, often primitive in comparison with more advanced types," and indigenous meant "having originated in and being produced, growing, or living naturally in a particular region or environment."

Mr. Chairman: You have two definitions, I guess. Perhaps the words "primitive by comparison" to other development may have certain connotations. I don't know what the reaction would be in the native community. But there are two specific differences in the definition just afforded by Mr. Edighoffer. If there is a feeling that we should leave the word "indigenous" rather than "aboriginal," are we agreed to leave to the word or to accept Mr. Edighoffer's--

An hon. member No. Just vote for or against the amendment. It's as simple as that.

Hon. Mr. McCaffrey: Can I just suggest if we were to borrow from the elaboration in the constitution, I am not sure this would help at all, but we could spell it out and say "Inuit, Indian and Metis peoples of Canada," since we are all trying to make it as broad as possible.

Mr. Kennedy: That adds a restrictive touch to my concept of what is intended.

11:30 a.m.

Hon. Mr. McCaffrey: It is more restrictive than--

Mr. Revell: Mr. McCaffrey, I do have the Concise Oxford. It is not the last word on definitions but "aboriginal" is defined as "indigenous, existing in a land at the dawn of history or before arrival of colonists." Then it particularly refers to Australian aboriginals, "Aboriginal inhabitant, especially of Australia." It is not restricted to Australians, but it seems to be one of those expressions that has a particular meaning, as I believe Mr. Kennedy pointed out, with respect to Australians. Then "indigenous" is defined as "produced naturally in a region; belonging naturally (to soil, etc.)." Indigenous though, in my own thinking, is a wider term. It is just one of those gut reactions you have to a word.

Mr. Kennedy: Put the question, Mr. Chairman.

Mr. Chairman: Do you still want to--

Mr. Edighoffer: The minister has suggested possibility of taking out "indigenous" and

Hon. Mr. McCaffrey: I'd throw that out since we are trying to get as broad an umbrella as possible. Mr. Kennedy's response was that he thought that restricted it. If we are back to the two words, I would prefer "indigenous."

Ms. Fish: Mr. Chairman, I am interested in the minister's suggestion about using three words instead of either indigenous or aboriginal but I would, as I made reference earlier, be concerned about the response on the last two lines. I say that because--let me see that I get my references correct here--in clause 1 of the amendment it refers in section 7(a) to specific named artists. Section 7(b) is the indigenous peoples area, which presumably is there for a specific reason, to highlight a source group of potential artists or contributors in a fashion not unlike section 7(a), which also highlights through using specific names a particular source group of artists.

The last two sentences, either as a recommended amendment by the minister or as recommended in further amendment by Mr. Edighoffer, cast the net a little bit more broadly. In other words, they speak to the eligibility of other artists based on a criterion of compatibility with the collection and the question of contributions to Canadian art or the expression of Canadian identity. I would really like to hear the minister's reaction to Mr. Edighoffer's proposed amendment to the last two lines, not as printed in the bill but in reference to the minister's own proposed amendment to those last two lines.

Let me say off the top that I am sensitive to Mr. Edighoffer's desire to phrase things more positively to convert "not inconsistent with" to an affirmative statement of "will be consistent with." I am myself unclear as to the differences between the words, and I am sorry I do not have the paper in front of it, but I think it is "contributions to the development of Canadian art" versus "manifested a distinctive Canadian identity."

I would like to hear the minister's reaction to those two possible amendments and understand how they fit as the broadening aspect of the pool of artists whose work might indeed be eligible for inclusion in the gallery and how that might fit with the preceding section 7(a) and (b), either as written or as amended, within that broad statement of artists. The last two lines none the less highlight or focus particular groups to which special attention should be paid when items are being considered for acquisition.

Hon. Mr. McCaffrey: I think before we lose track of the first amendment--just to repeat again--we are going to try to find another word or words if we can. But certainly the more we have talked and thought about this "indigenous-aboriginal," "indigenous" seemed more suited to our objectives.

On the second amendment, if I may say this, Susan, we have attempted in the bill as closely as possible to stick to the wording of the 1965 agreement. I think that is important. I think it is important too because Mr. McMichael, as I understand at the board, had agreed to the words that we have. Your amendment obviously is going to lead to some discussion, but I just wanted to say that as background. I wonder, Dianne, if you would like to say further on that.

Ms. Saxe: Certainly the words "and of other artists who have made contributions to the development of Canadian art" are taken exactly from the 1965 agreement. That was what the board requested; that was what Mr. McMichael very strongly requested. It was the basis, as far as I understand it, for the agreement of February 1, and the board and Mr. McMichael agreed to support the bill if we used this exact word plus the two additional lines in the amendment, which has been circulated.

Our feeling is that that terminology has been used by the collection since its inception in 1965. Everybody, and particularly Mr. Michael, who was very instrumental in getting that put in in the first place, is happy with it. We think it is not advisable to change at this late date. Secondly, we feel it could very well jeopardize the February 1 agreement between Mr. McMichael and the board if we start changing the sections which they have agreed to support.

Mr. Laughren: Mr. Chairman, it really bothers me that now we have to be careful of the wording of an amendment because it might alter something in the agreement which is not part of the bill. It is one of the serious problems that we have with this bill. It is probably appropriate that it has come up this way. That really bothers me, what has just been said.

The other point is that if the bill was left the way it is now, without amendment, it would indeed allow a kind of flexibility in the collection that maybe shouldn't be there; whereas if you take Mr. Edighoffer's amendment, whether the word "indigenous" or "aboriginal," or the three words that the minister was throwing around, combined with Mr. Edighoffer's amendment, does retain a focus for the collection that is not there in the bill as it stands now. When you say "other artists who have made contributions to the development of Canadian art" that could be an artist who is a pop artist who does surrealist pop cans.

Mr. Edighoffer: We mentioned McMurtry.

Mr. Laughren: Yes. So I can see the value of Mr. Edighoffer's amendment. I would be more worried about the word "indigenous" or "aboriginal" if we weren't considering an amendment as well. With the amendment there, whether it is "aboriginal" or "indigenous" is not as important, I think, particularly if we accept the amendment. They are two separate issues, I know, but here we go again talking about amending this bill, treading carefully around agreements which have been made. That is really bizarre, I think.

Hon. Mr. McCaffrey: May I comment? I understand what you are saying, Floyd. I am sure you are aware of this, but remember we have an amendment too. That amendment, which is just to be added in, reads "and whose art work and objects will not be inconsistent with the general character of the collection." I know you are aware of that, but I thought it spoke to some of the questions.

Mr. Renwick: That is the government amendment.

Hon. Mr. McCaffrey: Yes.

Mr. Renwick: Which has not been moved yet.

Hon. Mr. McCaffrey: No.

Mr. Lane: Mr. Chairman, I am just concerned that we spent considerable time this morning and other times talking about the rift that apparently has developed over the period of time between the McMichaels and the rest of the board, and how we all want to see that rift healed. I understand that the former minister was proposing the amendments we have in front of us for that particular reason, because Mr. McMichael wanted those in there in order to make him happier with the bill in total, and that it was his request, really, that we would bring in these proposed amendments.

11:40 a.m.

I would be reluctant to change them too greatly in case we get back to square one and had a disagreement again about what the bill actually said and who was going to be upset by it. I would like to think we would stick to the originals.

Mr. Chairman: I think, following the remarks of Mr. Laughren, then your own and legal counsel's, perhaps members of the committee should keep this in mind as we proceed with changes to the amendments, because they were agreed upon by all parties, especially by Mr. McMichael, who saw the bill and demanded certain changes. I guess there was a consensus. As you pointed out, perhaps Mr. Edighoffer may want to either continue to pursue his motion to make that change, keeping in mind the 1965 agreement has the word "indigenous," and that the February 1 agreement, in going to the bill, had no objection to it.

Mr. Edighoffer: In keeping with Mr. Lane's comment, we don't want to maintain the rift.

Mr. Renwick: Speaking to some kind of point of order, I don't see "indigenous" in the 1965 agreement. I only make the point it is not there so far as I know, but I don't think that alters the discussion.

Mr. Chairman: Finally, before we vote on this, there is an additional definition of the words "aboriginal" and "indigenous."

Mr. Revell: Some time between the publication of the Concise Oxford Dictionary and the most recent edition of the shorter Oxford, the definition of "aboriginal" has changed. It seems to have a slightly broader meaning, but I am still not certain that "indigenous" isn't a better word.

"Aboriginal" is defined as "first or earliest known, primitive, indigenous, earlier than European colonists" in the 1788 definition. "Pertaining to aborigines or to native races" is an 1851 definition. In 1844, "indigenous" is defined as, "born or produced naturally in a land or region; native to the soil, region, et cetera." "Native" is a vernacular expression. "Inborn, innate," I don't think that helps very much with the definition. I think the prime definition is, "born or produced naturally in a land or region" and "native to the soil, region, et cetera."

I would comment on one other point. I appreciate what the federal government was doing, and the provinces, in the constitutional bill, but I question whether or not the definition is as exclusive as we would like. I understand there is even still some disagreement between various Eskimo people, for example, as to whether or not Inuit is the term that applies to all. Of course, in Canada we have Métis, and then there is a group called nonstatus Indians who may be 99 per cent Indian.

There is a wide dichotomy. A general term like "aboriginal" or "indigenous"--and I don't know how you can choose between the two words from what I have read--both have much the same meaning when I read them. I guess you can vote on which one is better, "aboriginal" or "indigenous," which is essentially what the motion is doing. I couldn't make a legal opinion as to which word is better. I guess that is my position.

Mr. Renwick: Part of my confusion at the moment simply is that I am constrained to abide by what Mr. Robinette said in his statement here on behalf of the McMichaels. That is my sense of it. Until someone tells me that Mr. and Mrs. McMichael want some other change in it, I feel constrained by his appearance here not as a witness but as counsel for them.

I may remind the committee that Mr. Robinette said the following on page seven of the proceedings of the committee on the morning of February 2: "We had approached a possible settlement of this matter, on my side with Mr. McMichael and on Mr. Taylor's side and Mr. Solway's side, to do what was best for the long-term position of the collection. Mr. and Mrs. McMichael were concerned that the distinctive character of the collection might be changed, so we took some care to reword the section of the bill that deals with the type of art that shall be in the collection.

"As a result, we have named the Group of Seven and, in addition to that, Tom Thomson, Emily Carr and David Milne, who are not members of the Group of Seven but of the same period. We were concerned that including other artists who made contributions to the development of Canadian art, made it too broad, so we agreed that it should be restricted so that any art work or object purchased or acquired by the trustees will not be inconsistent with the general character of the collection."

I took it that the wording of Bill 175, as referred to this committee, combined with the amendment not yet put by the minister, met that requirement. I do not want to be too rigid about it. There is some merit in what Mr. Edighoffer says about making it positive--rather than "not inconsistent with," making it "consistent with" and "whose works have manifested a distinctive Canadian identity." I do not have a great deal of trouble with that.

However, I do think with all the travail behind us that if it is agreeable to the government, the collection and Mr. and Mrs. McMichael--as was stated by Mr. Robinette--then I would prefer to deal with it that way. If somebody is now prepared to say to me that Mr. and Mrs. McMichael, or Mr. Robinette on their behalf, want to make some changes, then I am quite happy to consider them well.

On the question of aboriginal or indigenous, I would come down on the side of using the word "indigenous" so that at some point we do not find somebody calling in aid the specific definition in the Canadian constitution to support what the meaning would be if we put it in. An English term such as "aboriginal," as counsel has pointed out to us, has a particular meaning, but the constitution, which is likely to be approved very soon, will have had a handcrafted definition.

If we put in the word "aboriginal" at this point, somebody is certain to argue that we were really thinking about that definition in the constitution. I think that is unwise. I would rather leave the meaning of that definition to constitutional issues and not to the question of what the board of trustees here might handle.

From my point of view I am quite happy with "indigenous," I am quite happy with the government amendment. I do not see Mr. Edighoffer's second amendment altering that in any substance. If, artistically, that is better phrased in the English language, I would accept the amendment as well. I am not going to go to the wall on one version or the other.

If we do accept Mr. Edighoffer's amendment, I think he has to make the correction to add "objects" in there as well so that it will be consistent with the heart of the definition, which refers to "art work and objects." His amendment would have to include "and other artists whose works and objects have manifested a distinctive Canadian identity, and whose works and objects will be consistent with the general character of the collection." It is just a grammatical change.

Hon. Mr. McCaffrey: If I may respond in the interest of time, we, the government and the ministry, are very happy to deal with both of these amendments. There are some slight word changes and slight emphasis changes. But from our point of view and in the interests of time, if this does help, you would prefer after the discussion to stick with the word "indigenous" and we would prefer recognizing the parallel objectives, but we would prefer to go with our amendment, "and whose art work and objects will not be inconsistent with the general character of the collection." Mr. Chairman, do I put this amendment, and if so, when? That in a nutshell is what I think we would like to proceed with.

11:50 a.m.

Mr. Chairman: It has to be moved by a member of the committee.

Mr. McCaffrey: Okay.

Mr. Edighoffer: I thought I was getting support when Mr. Laughren spoke. But I put the motion, so go ahead.

Mr. Chairman: There are two motions from Mr. Edighoffer. One is an oral motion and there is a written copy of the second one. The oral motion is to delete the word "indigenous" and to replace it with the word "aboriginal." Those in favour? Those opposed?

Mr. Chairman: The second motion is that section 1 of the bill be amended by deleting the phrase beginning with "and other artists" and ending with "Canadian art" and substituting therefor "and other artists whose works have manifested a distinctive Canadian identity, and whose works will be consistent with the general character of the collection." Those in favour? Those opposed?

Motion negatived.

Ms. Fish: I would now like formally to move the amendment the minister has indicated previously he would accept, and which was requested by the board of trustees and Mr. and Mrs. McMichael. The amendment is to section 1: That section 7 of the act as set out in section 1 of the bill be amended by adding at the end thereof, "and whose art work and objects will not be inconsistent with the general character of the collection."

Mr. Dean: Is there any serious objection to taking out that double negative in there? Is there is a legal reason why it should be "not inconsistent" rather than "consistent"?

Mr. Chairman: I had asked Mr. Edighoffer earlier on about the positive nature of using the words "will be consistent with" or the negative implication of "will not be inconsistent with" and I don't know.

Mr. Dean: I am suggesting, if there is no legal reason, I would be prepared to move that that be changed to be positive in the amendment we are considering now.

Mr. Kennedy: So it would read "will be consistent with."

Mr. Chairman: Again, I refer to a statement made by Mr. Renwick earlier. He said, quoting from the February 1 agreement, "We took some care to reword a section of the bill." And some care had been taken. I don't know the philosophical or semantic aspect as to why the wording is as we see it in the present amendment read by Ms. Fish. But apparently some care was taken in using the negative rather than the positive wording. There may have been some reasons for it.

Mr. Laughren: I don't know any.

Mr. Dean: Knowing solicitors as I do, they like to be "not inconsistent" so you haven't really pinned them down if you come to an argument. Just to put it on the board, I would like to move that the amendment we are considering be amended by eliminating the word "not" and changing the word "inconsistent" to "consistent."

Mr. Kolyn: I would like to make a comment. It seems we went to a lot of trouble to get the phrasing as close as possible to what all the interested parties want. I think legal counsel on both sides were very careful to try to get the best wording they could for each side. I would be against any changes to that wording for whatever reason. The McMichaels have accepted it and the board and the ministry have accepted it. I think we should leave it as

Mr. Dean: Give me one good reason why it should stay the way it is.

Mr. Kolyn: The only reason I see is that basically legal counsel have agreed on both sides and from that we can deduce the McMichaels have agreed with the board of directors.

Interjections.

Ms. Fish: Mr. Chairman, I would just like to go back and remind the committee of something I think Mr. Renwick reminded us all of in a very eloquent and articulate fashion, that this clause of the bill before us has been the subject of intense discussion and has been a cause of some of the ruptures that this committee not very long ago indicated a desire to heal. While I cannot personally find any substantive difference between the two phrasings, I am prepared to acknowledge that a lot of hard work and effort went into that wording, that the immediately affected parties settled upon this wording, and in the spirit of seeking to heal that rift and to move forward in a more positive fashion for the operation of the gallery, I really would prefer to accede to the request mutually put forward by the board and Mr. and Mrs. McMichael in respect of the wording in this clause. I think that is a reason that speaks to why I have moved and would ask for support for that amendment as it stands.

Mr. Chairman: We have now two eloquent appeals before the committee.

Mr. Dean: I still have not heard a good reason, Mr. Chairman, in spite of what my colleague has just said.

Mr. Renwick: I just want to show that perfect consistency is not one of my virtues. I argued for Mr. Robinette's statement that is in there, but I would be inclined to support Mr. Dean's subamendment.

Mr. Chairman: We have a motion by Mr. Dean that we change the wording. What is it again?

Mr. Dean: By deleting the word "not" and changing "inconsistent" to read "consistent."

Mr. Chairman: Deleting the words "not be inconsistent with" and changing this to "will be consistent" with the general character of the collection. Are there any further comments? No comments? Those in favour of that motion? Those opposed?

Motion agreed to.

Mr. Dean: If that opens up a big, new rift, it will be on my head.

Mr. Chairman: I do detect a certain rift.

An hon. member: I thought the rift was in Africa.

Mr. Dean: There is a rift in Africa and we don't want these days.

Mr. Chairman: Are there any further amendments? Let's go back to the amendment moved by Ms. Fish. Shall the amendment to section 1--

Ms. Fish: That would be my amendment as amended.

Mr. Chairman: Yes. Shall the amendment, as amended, carry?

Motion agreed to.

Section 1, as amended, agreed to.

On section 2:

Mr. Chairman: Are there any discussions or motions on section 2? Shall section 2 carry?

Section 2 agreed to.

On section 3:

Mr. Edighoffer: The only question I would like to ask on that is why you want to change the profit from that venture from the general to the special fund, or vice versa, sorry.

Mr. Chairman: You are referring to section 3, Mr. Edighoffer, that clause (9) (i) (c) of the said act be repealed?

Mr. Edighoffer: Yes. Why are the gift shop proceeds to be used for general purposes?

Mr. Chairman: Could we have an explanation from legal counsel?

Ms. Saxe: Yes. As I explained two weeks ago, the reason is that the current program of renovations is costing somewhere in excess of \$4 million. Most of that is being funded by the ministry. The ministry in particular and the government in general has a very strong policy of requiring agencies to come up with some portion of their own funds, that we should not be funding things 100 per cent, to give them some incentive for efficiency and that sort of thing.

The McMichael Canadian Collection has no funds of its own. They do not charge membership. They have not been conducting corporate solicitations. They do not have any income other than from the sale of art works and from their gift shop. Clearly, as Mr. Clague discussed two weeks ago, it would be undesirable to divert money from the sale of art works. People give art on the understanding that the art is to be hung, and even if it is to ever be sold, that is to be used for other art.

The gift shop funds do not, in our opinion, have anything that is so intrinsically necessary that they must be used only for art works, and therefore the board asked us to give them permission to use some of the money from the gift shop to pay their part of the cost of the renovations, which is about \$500,000. If they do not get permission to use the money from the gift shop, they will have to go out and raise it from the public in some way.

12 noon

Hon. Mr. McCaffrey: That is a significant amount of money.

Ms. Saxe: They might come and ask you for some.

Mr. Edighoffer: That will be fine.

Interjections.

An. hon. member: It was \$180,000 last year from the gallery shop.

Mr. Chairman: Are there any further questions?

Mr. Renwick: I do not have a question. I will oppose this amendment. I think collection needs that kind of money to give it flexibility to deal with it. If there is some special arrangement with respect to needing those moneys for the immediate purposes of the renovation of the building, it is not beyond the wit of the ministry to make the kind of amendment that would permit that, but to deprive the collection for all time of the net profit from the sale of the books and so on and so forth seems to me to be a very unwise limitation of the availability of funds.

When you think about the restraint time that we are all wedded into, to take this kind of money away from that collection seems to--

Mr. Kennedy: Am I missing something? The funds go into the general fund, which to me would add flexibility. Am I right in that interpretation?

Ms. Saxe: That is correct, sir. We are not taking money away from the collection and we are not restricting money from being used for art purchase; we are simply allowing the money from the gift shop to be used for whatever the board thinks right.

Mr. Kennedy: It is in the explanatory notes.

Mr. Laughren: You are allowing them to use it for purposes other than the acquisition of--

Ms. Saxe: For any purpose, including the acquisition of art, and including capital improvements.

Mr. Laughren: Now it is restricted to--

Ms. Saxe: That is right.

Mr. Laughren: That is a difference, a substantial difference.

Mr. Renwick: That is right because one can argue the other side of that coin very clearly. If the special fund is the fund to be used for the purposes of acquisitions, other funds are not to be used for it.

Ms. Saxe: But there is no prohibition against putting money from the general fund into the special fund.

Mr. Renwick: No, but having heard all of the legal opinions expressed around this table, I would not--

Mr. Kennedy: Especially by the non-lawyers, those are the ones to listen to.

Mr. Renwick: I would not consent to allow the board to use those net profits for other purposes. I think that gallery and the funds available for acquisitions is going to be an immensely important part of the continuing vitality of the collection.

Mr. Edighoffer: Mr. Chairman, it is my understanding that the government has never placed any money in the fund to buy art works.

Ms. Saxe: Perhaps I can clarify that. We have not ever given money specifically to be put into the special fund. However, we have provided substantial sums of money over the years, which have been used for the purchase of the things to be sold and for salaries of staff, which have contributed to the profits. It is only in the last year or so that the shop is becoming more self-contained and fact is paying its own salaries out of its revenues.

In fact, part of the reason why there has been such a large accumulation in the special fund is precisely that all the costs of the gift shop have been paid out of the general fund.

Mr. Laughren: The fact still remains, does it not, that the government's moneys have gone for the operation of the gallery, the construction et cetera, not for acquisitions for the collection?

It really bothered when the minister responded in the House at one time. He talked about the collection being so much more valuable now because of the government contributions over the years. So it really was a bit of sleight of hand on the minister's part because it is clear now that the acquisitions have been accomplished by other methods.

You can make the argument if you like that because the collection didn't have to spend money on construction, it was then able to make acquisitions out of the money available to it. That is not a very good argument in my view.

Mr. Chairman: Are there any further comments?

Mr. Renwick: I think it would be extremely important for the public to know that, and I presume a sign would be up there, that if one bought a book or an art reproduction or something like that from that gallery, he was contributing to the fund which could be used only for the purpose of acquiring art works and objects for the collection. I think that would be tremendously important. I can't believe in a time of restraint if we put these moneys into the general fund of that collection that it will not mean the government will say, "No, you maintain your buildings of that," and it will restrict the future development of the collection.

There is absolutely no doubt the government has got the obligation to maintain in perpetuity the buildings in perpetuity. They are going to say to them, "Boy, if you need to do some maintenance or repairs out there, you do it out of the general fund. Don't go around buying art work."

Mr. Laughren: What is happening now is a good example of that. Architectural changes to protect the collection are not being made out of this special fund. If that special fund was available to it, I can just see what would happen. I agree, in order to protect the integrity of that fund for the purpose of acquisition, that section should not be removed from the bill.

Mr. Kennedy: Can the government tell the board of directors how to spend their money? It seems to me that is what the board is there for now (inaudible) expansion. I know if they come to the government, the government can say yes, or will.

Ms. Saxe: The government can put conditions on its grants. The capital grant of \$4 million plus which we are making to them is something that we have made subject to conditions, just as almost all of our grants are made subject to conditions to make sure they are used for the purposes for which they are supposed to be used and to make sure that matching grants through various--

For example, as you probably know, all Wintario grants are subject to substantial requirements that matching grants be raised. The same thing applies for our other capital budgets for other agencies. We always require that they raise some proportion of money themselves. That is not the same as our operating grants, which generally are relatively unconditional. It is not a matter of us telling them what to do, but it is a matter that we do take the position we have the right to put certain conditions on extra grants of money.

Mr. Kennedy: Here again I apply what Susan mentioned that this was agreed to by the principals and the very intensely interested parties. I would be inclined--in fact, I would support the section in clause 3, Mr. Chairman.

Mr. Renwick: In response to Mr. Kennedy's comment, I don't think that anybody can tell the board what to do with its funds, but what is the board's right as against the crown? That is the crucial question and that question is decided by the agreement. The crown agrees to preserve--the crown, nobody else--and maintain in perpetuity the lands and buildings of Tapawingo. In other words, the board could say to the government, "Look, you have got to provide us with the funds to provide for the preservation and maintenance of the lands and buildings as a setting for the gallery."

If we take this out, then the government will turn around and say, "Yes, but you had better use your general funds first," and that means there won't be the ambit for acquisition and growth and development that was originally comprised in the intention. I think it is a serious mistake the government is making to deprive the collection of those moneys.

Mr. Kennedy: It would then fly in the face, in a way, of the first clause that we have already moved, and that is to gain a collection, to enhance the collection. That is one of the responsibilities. In doing that, they have to have funding obviously.

Mr. Renwick: They have got to have funds but they can't turn to the government of the province of Ontario with any handle whatsoever, as far as I can see, to get moneys from the government for the purpose of acquisition of art. They can get money from the government if the government will honour its obligation to preserve and maintain the buildings because the crown has agreed to do it in perpetuity.

12:10 p.m.

Mr. Kolyn: It seems to me that the government agreed to preserve and maintain the buildings and we have been doing that. We also have been doing that by nurturing the bookstore to the position where it is making a profit. It was done in the hope of giving the board a little more flexibility with the money they obtained. It is really up to the board to decide where this new revenue should be going.

Mr. Laughren: May I respond to Mr. Kennedy's comments, because I think they were appropriate, that the responsibility of the legislation is to ensure that the collection is enhanced, and he used that word.

By guaranteeing them access to that special fund, to the bookstore sales and profits, assuming the bookstore is run properly and so forth, what we are saying is, "You will always have access to that fund for the enhancement of the collection." If you take this out, then you are saying to the collection, "You will not have access to this special fund and you may very well have to use all that special fund money for other purposes than the enhancement of the collection."

It seems to me if you want to carry through with what you expressed, namely, enhancing the collection, with which I agree, this is one way of ensuring that that happens.

Mr. Kennedy: May I ask the deputy minister, is there a problem with this fund and this acquisition? It is an acquisition that seems to me to have built up quite a surplus. I can't see that it is a problem.

Mr. Cornell: To the best of my knowledge, there is no problem with it at all. This was requested by all parties to keep in line with what we are trying to do. Many of the agencies that report to us try to make some financial contribution to what we are trying to do, and this was their way of doing it. The idea was that once the renovations were over and they had paid, which will turn out to be a small share, they would then be using it for whatever purposes they wanted, which will probably be back in the acquisition area.

Hon. Mr. McCaffrey: It is their option, I think.

Mr. Kennedy: I think we should give the board that flexibility, having listened to all the discussion on it.

Mr. Laughren: The ultimate flexibility is to let them have that special fund.

Mr. Chairman: All those in favour of section 3? Those opposed?

Section 3 agreed to.

Section 4 agreed to.

On section 5:

Ms. Fish: I would move formally again an amendment that has been requested and that the minister has given previous notice of his willingness to accede to.

Mr. Chairman: Ms. Fish moves that clause 18(c) of the act as set out in section 5 of the bill be amended by adding after "board" in the third line, "and such duties as are set out in an agreement dated October 7, 1980, between the chairman of the board and Robert McMichael."

Mr. Edighoffer: I was just wondering if it is right to leave the last few lines in there, "and shall hold such office during the pleasure of the Lieutenant Governor in Council."

Ms. Saxe: I think I can respond to why the words are there. I should bring out two points. First of all, as has been said before, this clause with the amendment that has just been moved by Ms. Fish is precisely what was agreed to by the board and by Mr. and Mrs. McMichael, which we have been requested to have passed. Second, it is parallel to the previous position that Mr. McMichael held as director, which was also at pleasure.

Mr. Renwick: I just want to reiterate the point that this is what makes the bill so sloppy and so unacceptable. That is why I went into the peroration before about the kind of statement that will be made on third reading because this becomes extremely misleading. It will be a public statute in the province of Ontario. In theory, nobody can go and ask for a copy of that agreement to see what the duties are there, so the members of the public will not have access to that agreement if they get around to asking for it in the first place.

Second, we now have a reference to an agreement which of course then leaves out any reference to the original agreement and some other agreement that is around as well. It is very untidy, very unsatisfactory. That is why I was so anxious that the whole question of the basic constitution and the future constitution of the McMichael collection be part of a consensus statement about what is going to happen, however it is agreed, presumably now by the minister at the time of the third reading of the bill. It is an extremely untidy arrangement. That is why I moved in 1972 that the original agreement should have been appended to the statute at that time.

A public statute of Ontario that has a reference to an agreement that is not available to the public is the sloppiest way of conducting legislative business that I know of. I rest on the hope that under the aegis of this minister those problems will be solved in the next year or so and we will get a proper McMichael Canadian Collection Amendment Act dealing with these fundamental parts of its constitution and its future constitution.

I may add an addendum that I had forgotten about in my other remarks, which is that one of the urgent things that came before the committee, and I think received a degree of approbation within the committee, was that some thought should be given to public representation either on the board of trustees or a wider membership availability so that members of the community could be members of the McMichael Canadian Collection with some representation from members of the community on the board.

This is the point my colleague spoke to, that it is a very sloppy and untidy way of carrying out business. I hope in the next year or two that it will be finally clarified for us.

Mr. Laughren: I really feel we are building something on a foundation of sand the way this is constructed. I am interested in knowing how the minister feels about it because I have always had difficulty when I read a statute and there are references to other statutes in it. That is bad enough for the lay person to deal with, but then to read a statute that refers to an agreement which in turn--I don't know whether that 1980 agreement refers to the 1965 agreement or not, Does it? It doesn't. So there is no reference anywhere to the 1965 agreement, which is really a sad commentary, I think. I would be interested in knowing whether the minister, even acknowledging the fact that he is new to this job, would entertain the idea of somehow building in the agreements to the legislation.

I have seen legislation with things attached to the end of it. They are not called appendices; they are called schedules and so forth. Somehow it should all be put together as a package. I look at this bill, and I know we hope it doesn't happen, and I can just imagine this legislation being challenged at some point in the courts with reference to the agreement and questions as to which has precedence, the legislation or the agreement. I don't know how it would be resolved.

As members of the committee, we are not going to solve it now, but it seems to me there should be something in place when we report back to the House that says we recognize how unsatisfactory this arrangement. We have a big problem and we are dealing with a small part of that big problem, namely, the current issue. I think that was a mistake from the beginning, that we did not take a look at the whole bill and make the appropriate changes to it, rather than dealing with it as an issue, because it had become such a big public issue and an important one. I would be interested in knowing what the minister thinks at this point could be accomplished.

12:20 p.m.

Hon. Mr. McCaffrey: I think the extent to which this bill is dealing with the current issue begs another question. To what extent had all of these matters, that is, the agreements, the original agreement, been spoken to? Maybe the current problem would not have surfaced to the extent that it did.

What I do not know is what the hell the vehicle is, but I said I would undertake to speak to that at the time we have third reading and I would hope to have a specific recommendation, that is, a vehicle. God forbid that that be another act, but I do not know to what extent a memorandum is going to give us the flexibility. Any memorandum of understanding that is currently being worked on will have to be public. We would want it to be public; the ministry would want it and all of the other memorandums to be public, to speak to some of these overlapping issues.

Beyond that, I will just undertake to put my mind around that and have as specific a suggestion as possible at the time of third reading. I know what you are saying; I just do not know the answer yet. That there shall be one, we will endeavour to ensure.

Mr. Chairman: Those in favour of the amendment as read by Ms. Fish? Those opposed?

Motion agreed to.

Section 5, as amended, agreed to.

On section 6:

Mr. Renwick: On section 6, what is the intention with respect to royal assent? Do you intend to have it given royal assent in the normal process of the House?

Hon. Mr. McCaffrey: As soon as possible is our objective.

Mr. Renwick: You are not going to withhold it for any reason for any period of time?

Hon. Mr. McCaffrey: Oh, no.

Mr. Renwick: Before we go to section 7 and knowing the procedural problem that is involved, we did have this discussion about the definition of the collection, the point being that the corporation is called the McMichael Canadian Collection, but the definition in the act of the word "collection" does not refer anywhere to the collection meaning the McMichael Canadian Collection of art works and objects and so on. I have felt for a long time that Mr. and Mrs. McMichael are entitled to know that that collection, rather than the corporate vehicle, should be designated in the statutes of Ontario as the McMichael Canadian Collection.

There was some talk that an appropriate amendment could be introduced. At this point I want to make certain the minister understands that. If there were some method by which he could bring in an amendment to do that, I think it would have the agreement of the committee. That was the sense of the discussion we had earlier.

Certainly Mr. Kennedy participated in it. Perhaps it would be possible when the bill goes back to the House that in committee of the whole House the minister might choose to introduce a new amendment, or he might choose to introduce it now with the consent of the committee.

All it would require would be an amendment to section 1 of the act to establish the McMichael Canadian Collection Act to change the definition of the term "collection" to mean "the McMichael Canadian Collection of art works and objects vested in the corporation of Her Majesty the Queen in right of Ontario and held by the corporation for exhibition and display."

There may be some other place to do it. I am not going to ask that you rush into it, but please do it at some point.

Hon. Mr. McCaffrey: I saw your concerns in the transcript. Diane and I really just had a minute or two before we came in today to talk a little bit about that. We are both sensitive to it, but we do not know the answer though.

Mr. Chairman: Thank you. I guess this would constitute an amendment to section 1 of the 1972 act.

Mr. Renwick: Yes. There may be some better way than that of doing it, but some method. If the bill, when it is reported back, went into committee of the whole House for the purpose of that amendment, I am sure all of us would feel we could support it.

Mr. Chairman: I guess the minister has taken these comments under advisement?

Hon. Mr. McCaffrey: Yes, Mr. Chairman.

Mr. Chairman: All those in favour of section 6? Those opposed?

Section 6 agreed to.

On section 7:

Mr. Renwick: That is a nice short title. I would hate to see a long one.

Mr. Chairman: Yes.

Section 7 agreed to.

Bill 175, as amended, reported.

Mr. Chairman: I would like to thank everyone. There is some thinking you may have to do, Mr. Minister, and perhaps review some of the Hansard comments following our meeting today. I thank you and wish you success in your new responsibilities and definitely offer the co-operation of this committee. I am not suggesting an early date, but most likely your ministry may be one of the first ones to have its estimates before this committee, so we will look forward to seeing you again. Thank you, everyone.

The committee adjourned.

CA24N

XC12

- S78

S-7 (Addendum)

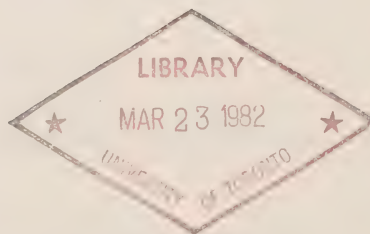
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

WEDNESDAY, FEBRUARY 17, 1982

McMICHAEL CANADIAN COLLECTION AMENDMENT ACT

Morning sitting

NB: New pages 3, 4, 5, 7, 13, 15, 18, 20, 21, 22, 26, 31, 36



Mr. Edighoffer: Just before we go into clause by clause, I would like to add my congratulations to the minister on his appointment. However, he said that last night or in the last day or so he had considerable discussion with members of his staff, and I am certain that they have informed him of the commitments that have been made by the previous minister in reference to the bill. I am thinking in particular in reference to the minutes being completely open. I was hoping that he would have included in his opening statement that he would continue the commitments made by the previous minister.

Hon. Mr. McCaffrey: I recall a number of commitments with regard to materials requested from Mr. Kolyn--again this just showed up in the transcript--and I think from Mr. Renwick. I believe that material has been made available. With regard to the discussion that took place on the minutes, we can all just go back and read the transcript, but my sense of that was--and there was an interesting little interchange between Mr. Conway and Mr. Taylor and Mr. Baetz, as I recall--that I did not think it was resolved that the minutes would be forthcoming.

I would be happy to have the deputy or others respond to that, but my sense of it was that if we are going to have as a policy with regard to our relationship with agencies, a different policy vis-a-vis minutes, we can do that, but I did not know that it would be appropriate for us in a retrograde way to go back on what had been an understanding. Mr. Taylor's comments, I thought, were fairly clear on that. He did not see the minutes as public documents.

Mr. Edighoffer: However, I must add that the previous minister had said that all future minutes would be open to the public. Am I correct in understanding that?

Mr. Chairman: If I recall correctly, I think you are correct about the understanding. The minister had indicated that future minutes of the board will be presented with the exception of certain parts of the minutes and meetings that the board may feel are too sensitive. There was a qualifying clause to that but there was a definite commitment by the Honourable Reuben Baetz to make these minutes public, and this is the question that is being addressed to you, Mr. Minister.

Mr. Edighoffer: The new minister is agreeable.

Mr. Chairman: Since you are agreeable, I guess that answers your question then. We are beginning now with Mr. Renwick.

10:20 a.m.

Mr. Renwick: I am not interested in delaying the process of the committee, but I want to clarify a couple of matters that must now be clarified in the light of the documents that have been put before us this morning. I think there is obviously a very important correction to the proceedings of the last committee.

I refer to the question of the anonymous person who is the source, in my opinion, of the damage which has or could have been done to Mr. and Mrs. McMichael. I am very concerned that this

committee address its attention to how we will deal with the anonymous source, what our role is and what our position is. I specifically refer to the two-page letter from Mr. John P. M. Court, dated February 15, 1982, which is addressed to yourself, Mr. Chairman. I have just now had the opportunity to read it.

Obviously these scurrilous allegations first came into view of anyone--and I believe Mr. Court's letter is both accurate and that he carried out his correction of his position before this committee with great care--the document first surfaced in the possession of Mr. Sears. He also had the letter to the chairman of the committee, dated February 16, 1982, from the former vice-chairman, which I think is satisfactory to me in clarifying how the information first came into the possession of the then vice-chairman, Mr. Warren E. Jones.

I have expressed myself earlier about the seriousness of the matter. One possibility is for this committee to formally request the Solicitor General or the Attorney General, whichever is the appropriate ministry, to have an investigation made with a view to ascertaining whether or not there has been any breach of any law, rule or regulation and, if possible, if there is any such breach of any rule, law or regulation, to investigate and to identify the person who is the source of these anonymous documents.

I believe that this committee can do no less than that, and I think it is important that the letter from Mr. Court to yourself, sir, and Mr. Jones's letter to you, should be not only exhibits but should be read into the record of this morning's proceedings. I say that because they are in very real substance a correction of the existing proceedings of this committee; and if they are not repeated, then anyone who simply reads the minutes of these proceedings will be misled.

I am quite prepared to read the letters in, but perhaps you, sir, as chairman, since you were the recipient of them, should read them into the proceedings. Then I would appreciate the views of my colleagues on this matter which I raised. If it were appropriate, in order to have it properly before the committee, that I should make a motion with respect to reference of this matter to the Attorney General or the Solicitor General, I would gladly so move so that we could have the matter before us formally.

Mr. Chairman: My understanding is that there were requests prior to the adjournment of this committee to obtain an explanation from Mr. Jones. Such a letter was obtained, dated February 16. Following this a clarification of a statement in Hansard has been forwarded to me, dated February 15, from Mr. Court, who had been a witness before this committee, along with other witnesses. Copies of all of these letters have been distributed to the members of the committee.

There is no doubt we had a similar incident--I would qualify the word "similar"--but certainly a clarification of a statement in Hansard by Mr. Clague who wanted to clarify a statement he had made that there had been no misleading aspect of what he said with regard to minutes of the board. Since Mr. Clague was a witness at the time and was present at the time that we were questioning witnesses, this clarification was made and recorded.

Mr. Court has made his correction of a statement he made before the committee in the form of a correspondence. We agreed we would seek any information to be provided in written form, rather than to ask people to appear before this committee. It was my understanding it was a unanimous decision of this committee not to call people individually.

What Mr. Renwick apparently wants is to read the letter. We may read the letter or we may simply table the letter along with all the other documents. Tabling it is just as official as reading it. Tabled documents are officially tabled along with witnesses and are part of any form of testimony whether it is testimony presented orally by witnesses or testimony in the form of briefs. A brief is an official document, as is correspondence.

I have no reservation about someone reading the letter if they want to do so. Myself, I don't see any major aspect of impact on the deliberations of this committee to have the letter read.

Mr. Conway: Since you volunteered, Mr. Chairman, I agree with you entirely on the matter of the importance of correcting the record. I believe very strongly that on a critical question of interest to this committee, we now have information that very materially affects the record. I, for one, would very much appreciate it if you would carry out your offer and read both items into the record officially.

Mr. Chairman: The request was to read just Mr. Court's because that is the only other aspect of witnesses which constitutes a correction or clarification of Hansard. Since we have had this recorded in the case of Mr. Clague, I certainly see some logical parallel in having Mr. Court's statement recorded. If they are recorded in committee deliberations, they are reported in two ways. They could be briefs that are tabled, which are officially records of testimony, or they could be oral testimony before this committee which is picked up by Hansard.

Philosophically, or as a matter of principle, there is no difference between one or the other in terms of an officially tabled correspondence or document. I don't see any firm adamancy in terms of pursuing this, Mr. Renwick.

Mr. Renwick: Mr. Chairman, I reiterate I don't want us to get ourselves into a position where there is delay in the process of the committee. Would you, sir, or could I or Mr. Conway read the correction by Mr. Court of his evidence before this committee? I appreciate Mr. Court having taken the trouble to make certain that the confusion in the transcript was corrected and clarified. I would otherwise have had to raise it myself this morning.

10:30 a.m.

I believe Mr. Court took the proper course and I appreciate very much Mr. Jones' letter. I am quite happy to have Mr. Jones' letter as an exhibit, but a specific correction of the minutes of the proceedings from Mr. Court's point of view, the point of view of the public generally and the point of view of this committee should be part of the actual proceedings of the committee. I would request you, sir, myself or Mr. Conway to read the letter of February 15 into the record.

contained the allegations material. There was no indication of the source, and that was the first time that I had seen those documents. Mr. Sears clearly indicated that that was also the case in respect of himself.

"We reviewed the material carefully at that time, and Mr. Sears asked that I leave the matter to him. Some days later I was phoned by the vice-chairman, Mr. Warren Jones, and asked to pick up the documents from Mr. Sears and relay them to Mr. Jones. Mr. Jones then asked me to go through the material with him in his office. That was the first time he had seen it, and my second time.

"I trust that this clarifies the matter. I would once again assure you that I do not know who prepared the documents in question.

"Yours sincerely,

"John P.M. Court, Senior Adviser, Arts, Heritage, and Libraries Division."

This is on the letterhead of the Ministry of Culture and Recreation.

Mr. Renwick: Mr. Chairman, I appreciate Mr. Court's action in providing the committee with this correction. I would now move that the matter of the identity of the person who made the anonymous allegations should be turned over to the Attorney General and/or Solicitor General for investigation to determine whether there has been a breach of any law, rule or regulation and, if so, to investigate for the purpose of determining the identity of the person who made these anonymous allegations.

Mr. Chairman: With all due respect to your concern, Mr. Renwick, I believe your motion is unfortunately out of order. The function--and I refer to the instructions we were given by the House--of a committee on a bill is to go through the text of the bill clause by clause and, if necessary, word by word, with a view to making such amendments in it as may seem likely to render it more generally acceptable: Erskine May's Parliamentary Practice.

According to Beauchesne's Parliamentary Rules and Forms, there is no authority that a committee of the House, when considering a bill, should report anything to the House except the bill itself. I believe, in my judgement and understanding of the purpose of this committee's deliberations, we are to go clause by clause. We are processing a bill, and I don't believe your motion is in order, Mr. Renwick.

Mr. McCaffrey: Mr. Chairman, with your indulgence, may I just make a comment on that. I very much respect the point you have just made. Doug Arnott, who is the clerk of the committee--he and I had the opportunity to work together on a number of committees--knows that I am the only committee chairman who has never read the rules of order, and I take some pride in that. I wonder if we could do this. The whole matter of the allegations, as I see it, is probably one of the most distasteful things to anybody who even just reads the transcripts and the gossip, chatter and so forth that has been referred to. Virtually everybody has to be terribly offended and upset by that.

the Legislature and perhaps members of this committee on third reading could jointly somehow make three statements that would harmonize. But in reporting the bill, as you understand very well, Mr. Renwick, I cannot make any additional remarks or any addendum to the bill. I have not explored the possibility of myself being involved in third reading and making some kind of statement that would reflect the views of everybody on this committee.

I can certainly think about this. It could only be in the capacity of myself as a member of the Legislature, indirectly perhaps as the chairman of this committee. I cannot make any other comments. As I say, there may be other views expressed prior to going to clause by clause by some members of the committee. I would ask Ms. Fish to make a statement.

Ms. Fish: Thank you, Mr. Chairman. I do not wish to presume on the ministry's views in this regard, but perhaps I might suggest as one member of the committee a possible way to deal with the matter.

I would welcome understanding from the minister his views with respect to Mr. Renwick's first point about the question of clarification, as one reads through the several agreements and the acts, to sift out the nature of the responsibilities and so on, as I think Mr. Renwick fairly eloquently expressed. I won't pretend to repeat that for the committee, although it would seem to make some sense to pay some attention to that, to undertake an examination and to be reasonably certain that all the elements are considered, and that there is considerable clarity, as well as consistency, as between the government, the ministry and the board of trustees, which includes the McMichaels as well as others in terms of the responsibilities to be carried out with respect to the collection.

11 a.m.

I would find it difficult to suggest that one ought not to have that kind of clarity or consistency of opinion. That seems to be a very sensible route to go. If the minister shares that view, I would welcome hearing from the minister, who might satisfy himself in that regard. I would certainly join Mr. Renwick in expressing my wish--I quickly jotted down the points--that every effort is made to, as you termed it, "heal the rift" that appears to have developed and to move ahead in the operation of the gallery in the most positive, co-operative fashion possible to the benefit of everyone who is directly or indirectly involved.

Equally I would join in an expression of encouragement and wish to the board of trustees that they move as rapidly as possible--as I recall the testimony of Mr. Bell, it is his intention to seek to do that--to establish very clear guidelines respecting the several questions of--and, again, I was taking notes of Mr. Renwick's remarks--conflict of interest, the need for clear policies with respect to acquisition, deaccession and so forth.

In Mr. Bell's words, repeated by Mr. Renwick, the policies, the guidelines and the operation of the McMichael Canadian Collection can become a model throughout North America if not the world. Of course, I would as well, finally, join Mr. Renwick in expression of sincere thanks to all the witnesses who came before

Mr. Chairman: Mr. Edighoffer, we accepted the amendments that have been proposed by the minister to specific sections of the bill. The minister may want to make further amendments. But you are not talking about amendments but somehow integrating the February 1 agreement with the bill.

Mr. Edighoffer: That is right.

Mr. Chairman: Procedurally, I do not see it. The only thing I do see is amendments to the amendments. But by integrating that particular agreement, we are going into the whole area of the relationship between the statutory act of 1972 and other agreements.

Mr. Edighoffer: However, Mr. Chairman, I must remind you that it has been suggested in here that an amendment be included which really includes another agreement of October 7, 1980. So what is wrong with including another agreement?

Mr. Chairman: I believe the reference to the October one is made in the February 1 agreement, Mr. Edighoffer. That is the only reference to that. So the October 1980 agreement is integrated and is to be followed between the two parties as part and parcel of the February 1 agreement. I do not see any contradiction between the October agreement and the February agreement from that point of view.

Once again I reiterate that the first exercise in repairing any damage that may have been done is the fact there is that agreement of February 1. The fact that we are proceeding with two other amendments which were made by the former minister, and that this bill itself is on the road, goes towards establishing that harmonious relationship between the parties involved.

In terms of an appendix to the bill, I again reiterate we are going through a bill, we are processing the bill. Whether an appendix to this could be added as part of the bill, I am not sure that would be proper.

11:10 a.m.

Mr. Edighoffer: As you may recall during our previous discussions, in that agreement it was stated that the collection now known as the McMichael Canadian Collection "shall continue forever to be known by that name." We had quite a discussion, and we were informed by legal counsel that we really could not include the word "forever" in the legislation. But I think, if this agreement could be added as an appendix to the bill, that would be a sign for future legislators of what the intent of the agreement was.

Mr. Chairman: My understanding is that presently that particular statement constitutes an additional amendment to the act, which would have to be presented by the minister at some time in the future. Whether or not the minister is ready to include that as an additional amendment, I would have to leave to him. But, as you have pointed out, you are talking about future legislation and a future bill that may integrate that particular aspect of the name

Ms. Fish: Just to assist us in our procedure, I wonder if it would be possible to hear what Mr. Edighoffer is proposing with respect to changes in the last two lines of section 1, since that may bear upon the discussion about indigenous and aboriginal.

Mr. Edighoffer: All right. The second part of the amendment deals with the last two lines as we see them in the bill and the amendment proposed in the agreement. I would suggest amending that by deleting the phrase beginning, "...and other artists ..." and ending with "...Canadian art," which is in the present bill, and using the words, "...and other artists whose works have manifested a distinctive Canadian identity and whose works will be consistent with the general character of the collection."

Mr. Chairman: Perhaps we could read the present amendment to section 1 so that we can integrate the amendment presented by the minister. For the words "consistent with," originally we had the word "inconsistent." According to the amendment to section 1 presented by the minister, "...and whose art work and objects will not be inconsistent with..." you would prefer a more positive statement reading "consistent with."

Mr. Edighoffer: That's right. When I read the amendment, with respect to my colleague Mr. Renwick and the great legal advice he can usually give, I just felt this amendment acted in the same manner as you sometimes see in a lawyer's office. Instead of saying, "You are welcome," they say, "You are not unwelcome." I just thought it might clarify it a little more.

Mr. Chairman: There are two parts then to your amendment, Mr. Edighoffer. The first one deletes the word "indigenous" and substitutes for either semantic or constitutional reasons the word "aboriginal." The second one is to delete the words "have made contributions to the development of Canadian art" and simply to say "whose works have manifested distinctive Canadian identity."

11:20 a.m.

Mr. Edighoffer: As proposed in the bill and the agreement it reads: "and other artists who have made contributions to the development of Canadian art and whose art works and objects will not be inconsistent with the general character of the collection."

My suggestion is to delete that proposal and instead replace it with, "and other artists whose works have manifested a distinctive Canadian identity and whose works will be consistent with the general character of the collection."

Mr. Chairman: Is there any reason why you would find difficulty in accepting the wording of the ministry amendment, "whose works have made contributions to the development of Canadian art."? While you would feel that his works have manifested a distinctive Canadian identity, whether it is manifesting a distinctive Canadian identity makes it more universal or has specific reasons that would be more positive to the nature of the collection rather than the words "contributing to the development of Canadian art." Is there any serious objection to the words, "contributing to the development of Canadian art," as such?

Mr. Chairman: The implication, Mr. Edighoffer, would be the nature of the art, whether or not the word "indigenous" would limit--as it had been expressed--the wide scope of works of art from the native peoples of Canada, whether these works would be limited by using the term "aboriginal" rather than "indigenous." The words "aboriginal rights" have more of a legal implication in the constitution, referring to specific rights rather than being used as a descriptive adjective for the native peoples of Canada.

The question is whether we want to follow a legalistic description of the words "of our native peoples," or a more universal descriptive adjective that would allow a wider area of native art to be exhibited in the gallery. So the aspect we try to have is the limitation or the expansion of the works of arts to be included in the gallery. I don't know which of these really limits and which expands. On the question of sensitivity, I guess, there are two views here as to the reaction of native peoples.

Mr. Edighoffer: I just checked again. I read this a little more closely. Aboriginal in the constitution defines, "Aboriginal peoples of Canada includes the Indian, Inuit and Metis people of Canada." They have had to do that by (inaudible) definition.

Mr. Chairman: Is there any further discussion on this motion to amend the amendment to the amendment?

Mr. Renwick: Mr. Chairman, I was satisfied with the word "indigenous" as it appeared in Bill 175. Now that the question has been raised by Mr. Edighoffer, I don't actually know what the meaning of either of word is in relation to the Oxford English Dictionary, but I certainly feel that whichever of the two words is less restrictive is the one I would like to have in there. Without having the specific definitions before me from the Longer Oxford Dictionary, I would say that "indigenous" is a less restrictive term than "aboriginal." But I bow, not to legal counsel as legal counsel, but to legal counsel consulting the dictionary and letting us know what "indigenous" means since the question has been raised.

Mr. Chairman: Are there any further comments?

Mr. Kennedy: I am quite comfortable with the phrase as written, Mr. Chairman. Perhaps we are ready to put--

Mr. Renwick: My information is that the words mean roughly the same thing.

Mr. Kennedy: Yes.

Mr. Renwick: Now if somebody asks me what indigenous means, it is one of those words I don't--

Mr. Kennedy: So you can't get into any difficulty in defining it for anybody, Mr. Renwick.

Mr. Renwick: Now that the question has been raised, could we perhaps have the definitions of indigenous and aboriginal?

Mr. Revell: We have the Concise Oxford Dictionary.

Mr. Renwick: Can you find aboriginal in there?

Mr. Chairman: Mr. Edighoffer, you quoted something from a dictionary, did you not, in your initial comments?

Mr. Edighoffer: Yes, but--

Mr. Chairman: Would you read that again? Your quotation was from the dictionary, I guess, not the charter of rights.

Mr. Edighoffer: I stated something to the effect that aboriginal meant "being the first of its kind present in a region, often primitive in comparison with more advanced types," and indigenous meant "having originated in and being produced, growing, or living naturally in a particular region or environment."

Mr. Chairman: You have two definitions, I guess. Perhaps the words "primitive by comparison" to other development may have certain connotations. I don't know what the reaction would be in the native community. But there are two specific differences in the definition just afforded by Mr. Edighoffer. If there is a feeling that we should leave the word "indigenous" rather than "aboriginal," are we agreed to leave to the word or to accept Mr. Edighoffer's--

An hon. member No. Just vote for or against the amendment. It's as simple as that.

Hon. Mr. McCaffrey: Can I just suggest if we were to borrow from the elaboration in the constitution, I am not sure this would help at all, but we could spell it out and say "Inuit, Indian and Metis peoples of Canada," since we are all trying to make it as broad as possible.

Mr. Kennedy: That adds a restrictive touch to my concept of what is intended.

11:30 a.m.

Hon. Mr. McCaffrey: It is more restrictive than--

Mr. Revell: Mr. McCaffrey, I do have the Concise Oxford. It is not the last word on definitions but "aboriginal" is defined as "indigenous, existing in a land at the dawn of history or before arrival of colonists." Then it particularly refers to Australian aboriginals, "Aboriginal inhabitant, especially of Australia." It is not restricted to Australians, but it seems to be one of those expressions that has a particular meaning, as I believe Mr. Kennedy pointed out, with respect to Australians. Then "indigenous" is defined as "produced naturally in a region; belonging naturally (to soil, etc.)." Indigenous though, in my own thinking, is a wider term. It is just one of those gut reactions you have to a word.

Mr. Kennedy: Put the question, Mr. Chairman.

Mr. Chairman: Do you still want to--

Mr. Edighoffer: The minister has suggested the possibility of taking out "indigenous" and putting in "Indian, Inuit and Metis people of Canada."

Hon. Mr. McCaffrey: I'd throw that out since we are trying to get as broad an umbrella as possible. Mr. Kennedy's response was that he thought that restricted it. If we are back to the two words, I would prefer "indigenous."

Ms. Fish: Mr. Chairman, I am interested in the minister's suggestion about using three words instead of either indigenous or aboriginal but I would, as I made reference earlier, be concerned about the response on the last two lines. I say that because--let me see that I get my references correct here--in clause 1 of the amendment it refers in section 7(a) to specific named artists. Section 7(b) is the indigenous peoples area, which presumably is there for a specific reason, to highlight a source group of potential artists or contributors in a fashion not unlike section 7(a), which also highlights through using specific names a particular source group of artists.

The last two sentences, either as a recommended amendment by the minister or as recommended in further amendment by Mr. Edighoffer, cast the net a little bit more broadly. In other words, they speak to the eligibility of other artists based on a criterion of compatibility with the collection and the question of contributions to Canadian art or the expression of Canadian identity. I would really like to hear the minister's reaction to Mr. Edighoffer's proposed amendment to the last two lines, not as printed in the bill but in reference to the minister's own proposed amendment to those last two lines.

Let me say off the top that I am sensitive to Mr. Edighoffer's desire to phrase things more positively to convert "not inconsistent with" to an affirmative statement of "will be consistent with." I am myself unclear as to the differences between the words, and I am sorry I do not have the paper in front of it, but I think it is "contributions to the development of Canadian art" versus "manifested a distinctive Canadian identity."

I would like to hear the minister's reaction to those two possible amendments and understand how they fit as the broadening aspect of the pool of artists whose work might indeed be eligible for inclusion in the gallery and how that might fit with the preceding section 7(a) and (b), either as written or as amended, within that broad statement of artists. The last two lines none the less highlight or focus particular groups to which special attention should be paid when items are being considered for acquisition.

Hon. Mr. McCaffrey: I think before we lose track of the first amendment--just to repeat again--we are going to try to find another word or words if we can. But certainly the more we have talked and thought about this "indigenous-aboriginal," "indigenous" seemed more suited to our objectives.

On the second amendment, if I may say this, Susan, we have attempted in the bill as closely as possible to stick to the wording of the 1965 agreement. I think that is important. I think it is important too because Mr. McMichael, as I understand at the board, had agreed to the words that we have. Your amendment obviously is going to lead to some discussion, but I just wanted to say that as background. I wonder, Dianne, if you want to comment further on that.

On the question of aboriginal or indigenous, I would come down on the side of using the word "indigenous" so that at some point we do not find somebody calling in aid the specific definition in the Canadian constitution to support what the meaning would be if we put it in. An English term such as "aboriginal," as counsel has pointed out to us, has a particular meaning, but the constitution, which is likely to be approved very soon, will have had a handcrafted definition.

If we put in the word "aboriginal" at this point, somebody is certain to argue that we were really thinking about that definition in the constitution. I think that is unwise. I would rather leave the meaning of that definition to constitutional issues and not to the question of what the board of trustees here might handle.

From my point of view I am quite happy with "indigenous," I am quite happy with the government amendment. I do not see Mr. Edighoffer's second amendment altering that in any substance. If, artistically, that is better phrased in the English language, I would accept the amendment as well. I am not going to go to the wall on one version or the other.

If we do accept Mr. Edighoffer's amendment, I think he has to make the correction to add "objects" in there as well so that it will be consistent with the heart of the definition, which refers to "art work and objects." His amendment would have to include "and other artists whose works and objects have manifested a distinctive Canadian identity, and whose works and objects will be consistent with the general character of the collection." It is just a grammatical change.

Hon. Mr. McCaffrey: If I may respond in the interest of time, we, the government and the ministry, are very happy to deal with both of these amendments. There are some slight word changes and slight emphasis changes. But from our point of view and in the interests of time, if this does help, you would prefer after the discussion to stick with the word "indigenous" and we would prefer recognizing the parallel objectives, but we would prefer to go with our amendment, "and whose art work and objects will not be inconsistent with the general character of the collection." Mr. Chairman, do I put this amendment, and if so, when? That in a nutshell is what I think we would like to proceed with.

11:50 a.m.

Mr. Chairman: It has to be moved by a member of the committee.

Mr. McCaffrey: Okay.

Mr. Edighoffer: I thought I was getting support when Mr. Laughren spoke. But I put the motion, so go ahead.

Mr. Chairman: There are two motions from Mr. Edighoffer. One is an oral motion and there is a written copy of the second one. The oral motion is to delete the word "indigenous" and to replace it with the word "aboriginal." Those in favour? Those opposed?

Motion negatived.

Ms. Saxe: But there is no prohibition against putting money from the general fund into the special fund.

Mr. Renwick: No, but having heard all of the legal opinions expressed around this table, I would not--

Mr. Kennedy: Especially by the non-lawyers, those are the ones to listen to.

Mr. Renwick: I would not consent to allow the board to use those net profits for other purposes. I think that gallery and the funds available for acquisitions is going to be an immensely important part of the continuing vitality of the collection.

Mr. Edighoffer: Mr. Chairman, it is my understanding that the government has never placed any money in the fund to buy art works.

Ms. Saxe: Perhaps I can clarify that. We have not ever given money specifically to be put into the special fund. However, we have provided substantial sums of money over the years, which have been used for the purchase of the things to be sold and for salaries of staff, which have contributed to the profits. It is only in the last year or so that the shop is becoming more self-contained and fact is paying its own salaries out of its revenues.

In fact, part of the reason why there has been such a large accumulation in the special fund is precisely that all the costs of the gift shop have been paid out of the general fund.

Mr. Laughren: The fact still remains, does it not, that the government's moneys have gone for the operation of the gallery, the construction et cetera, not for acquisitions for the collection?

It really bothered when the minister responded in the House at one time. He talked about the collection being so much more valuable now because of the government contributions over the years. So it really was a bit of sleight of hand on the minister's part because it is clear now that the acquisitions have been accomplished by other methods.

You can make the argument if you like that because the collection didn't have to spend money on construction, it was then able to make acquisitions out of the money available to it. That is not a very good argument in my view.

Mr. Chairman: Are there any further comments?

Mr. Renwick: I think it would be extremely important for the public to know that, and I presume a sign would be up there, that if one bought a book or an art reproduction or something like that from that gallery, he was contributing to the fund which could be used only for the purpose of acquiring art works and objects for the collection. I think that would be tremendously important. I can't believe in a time of restraint if we put these moneys into the general fund of that collection that it will not mean the government will say, "No, you maintain your buildings out of that," and it will restrict the future acquisition and development of the collection.

Hon. Mr. McCaffrey: I think the extent to which this bill is dealing with the current issue begs another question. To what extent had all of these matters, that is, the agreements, the original agreement, been spoken to? Maybe the current problem would not have surfaced to the extent that it did.

What I do not know is what the hell the vehicle is, but I said I would undertake to speak to that at the time we have third reading and I would hope to have a specific recommendation, that is, a vehicle. God forbid that that be another act, but I do not know to what extent a memorandum is going to give us the flexibility. Any memorandum of understanding that is currently being worked on will have to be public. We would want it to be public; the ministry would want it and all of the other memorandums to be public, to speak to some of these overlapping issues.

Beyond that, I will just undertake to put my mind around that and have as specific a suggestion as possible at the time of third reading. I know what you are saying; I just do not know the answer yet. That there shall be one, we will endeavour to ensure.

Mr. Chairman: Those in favour of the amendment as read by Ms. Fish? Those opposed?

Motion agreed to.

Section 5, as amended, agreed to.

On section 6:

Mr. Renwick: On section 6, what is the intention with respect to royal assent? Do you intend to have it given royal assent in the normal process of the House?

Hon. Mr. McCaffrey: As soon as possible is our objective.

Mr. Renwick: You are not going to withhold it for any reason for any period of time?

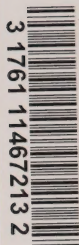
Hon. Mr. McCaffrey: Oh, no.

Mr. Renwick: Before we go to section 7 and knowing the procedural problem that is involved, we did have this discussion about the definition of the collection, the point being that the corporation is called the McMichael Canadian Collection, but the definition in the act of the word "collection" does not refer anywhere to the collection meaning the McMichael Canadian Collection of art works and objects and so on. I have felt for a long time that Mr. and Mrs. McMichael are entitled to know that that collection, rather than the corporate vehicle, should be designated in the statutes of Ontario as the McMichael Canadian Collection.

There was some talk that an appropriate amendment could be introduced. At this point I want to make certain the minister understands that. If there were some method by which he could bring in an amendment to do that, I think it would have the agreement of the committee. That was the sense of the discussion we had earlier.

THE
LIBRARY
OF THE
MUSEUM OF
COMPARATIVE ZOOLOGY
AT
HARVARD UNIVERSITY
CAMBRIDGE, MASS.

SEP 17 1986



3 1761 11467213 2